
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**PROTECTION OF HEALTH OF WOMEN PRISONERS IN INDIA: IS
IT A DISTANT DREAM?**- Shubhankar Paul¹

"Health is a complete harmony of the body, mind, and spirit. When one is free from physical disabilities and mental distractions, the soul's gates open."

--- B.K.S. Iyengar

ABSTRACT

In most prisons, prisoners live in deplorable conditions and are forced to spend years languishing there. When inmates' fundamental human rights are stripped away, they become even more resistant to rehabilitation. For female inmates, the situation is even more dire. Women have their gender-specific needs while being imprisoned. Our prison system is inclined primarily towards male inmates. As a result, female inmates are susceptible to a biased administrative system. Female inmates make up only a tiny percentage of the entire prison population in India, but their numbers are steadily rising. Imprisoned women in India have been reported to have inadequate access to medical care. Despite numerous government suggestions, the health and medical support system for female prisoners is unsuitable due to a lack of infrastructure, the unwillingness of jail administrators, and funding-related challenges. With the newly revised Model Prison Manual², significant strides are being made from the female inmates' health perspective. However, ground-level implementation has not been done, and many health-related problems of female inmates remain unaddressed, like their mental health issues, sexual health, and reproductive health, which require conspicuous and rapid attention if we attain meaningful health goals among the prisoners. This research

¹Research Scholar, Raiganj University

²(n.d.). *MODEL PRISON MANUAL*. Bureau of Police Research and Development. Retrieved August 22, 2023, from <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>

article tried to shed light on the health of female inmates in Indian prisons. It has supplied extensive information on the medical and dietary resources available to female inmates at the penal institution.

KEYWORDS: Prisons, Women Prisoners, Health, Mental Health, Hygiene, Constitutional Rights.

INTRODUCTION

Several constraints are in place, including periodic healthcare examinations, regular interactions with medical professionals, separate treatment rooms for females in prison hospitals, and more, to ensure that female detainees maintain decent health while incarcerated. However, notwithstanding the rules and recommendations in the National Jail Manual, the overall health situation in India of women prisoners is not very promising. The vast majority of correctional facilities lack distinct female wards that are operational or have sufficient numbers of female gynecologists. Because it encompasses psychological, physical, sexual, and reproductive health issues in addition to reproductive health issues, the health of female inmates does require specific attention. Due to a shortage of alternative facilities, convicts who suffer from mental or psychiatric diseases are frequently allowed to remain in prison rather than receive the appropriate care. In many instances, the personnel at the prison do not have the fundamental knowledge necessary to temporarily satisfy the gender-specific demands of female convicts. This is because there is insufficient appropriate and ongoing staff to deal with female prisoners. Regarding nutrition, directly tied to good health, multiple visits to female prisons have indicated that female convicts are provided with inferior calorie counts and lower nutritious value than foods served to male inmates. The kitchens and dining facilities of the jails have been found to have a somewhat poor level of hygiene on multiple occasions. Even though there are significant rules, the extra nutritional needs of female prisoners in Indian jails are frequently overlooked. This is even though female prisoners experience menstruation and have reproductive demands. In addition, there are several places in India where there is a severe problem with overpopulation among female prisoners because there are not enough correctional institutions in the country that are exclusively for women. This overcrowding leads to several health-related challenges due to improper living standards and poor hygiene practices. Because there is a disproportionately low number of women incarcerated, many of those incarcerated end up being housed in facilities located a significant distance from their homes. This makes it exceptionally difficult

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

for family and friends to visit the inmates regularly. Therefore, the dread of losing touch with family and the accompanying feelings of isolation hurt the mental health of women prisoners, manifesting as despair, anxiety, and nervous breakdowns. There were a total of 51 female inmates who passed away while serving their respective sentences in 2021, and according to the reports, 48 of those deaths were considered to be due to natural causes, while the remaining three deaths were the result of inmates attempting suicide³. These statistics pose concerns regarding the availability of adequate medical care to assist inmates in surviving severe health situations. It is not hard to conclude that the authorities in charge of maintaining order in India's prisons still have many miles to go before they can translate their proposed ideas into action and consequently ensure that the female inmates incarcerated there are subjected to healthy living conditions.

WHERE DO INDIA'S PRISONS STAND IN TERMS OF MEDICAL CARE AND FOOD SUPPLY AS FAR AS FEMALE PRISONERS ARE CONCERNED?

According to the findings of a survey conducted by the government on female inmates of 145 Central Jails in partnership with the National Commission for Women (NCW) and other non-governmental organizations (NGOs), several challenges have been identified, one of the primary concerns being the paucity of healthcare and physiological amenities offered to female inmates⁴. Since their inception, most Indian correctional institutions have been constructed with the requirements of male inmates as their primary focus. Due to the broad and ongoing legacy of gender discrimination, women's specific healthcare requirements regarding menstruation and reproductive hygiene are frequently not satisfied. Female convicts typically struggle with post-traumatic disarray, depression, anxiety, and various other mental health conditions that can lead to suicide impulses as well as self-harming behaviors. However, the availability of psychological care is quite restricted, which frequently fails to meet the requirements of the inmates. In 2003, when there was a drought in many parts of the country, the situation deteriorated to the point wherein female prisoners in some facilities were only allowed access to one pitcher of drinking water every four or five

³Ministry of Home Affairs, Government of India. (2022, August 18). *Prison Statistics India 2021*. National Crime Record Bureau. Retrieved January 2, 2023, from <https://ncrb.gov.in/en/prison-statistics-india-2021>

⁴(2018, January 5). *Government conducting survey on women inmates in Central Jails*. The Economics Times. Retrieved August 22, 2023, from <https://economictimes.indiatimes.com/news/politics-and-nation/government-conducting-survey-on-women-inmates-in-central-jails/articleshow/62378932.cms>

days, which they had to share. Therefore, the issue of congestion, a shortage of female staff and medical professionals, the deficit of gender-responsive education among the correctional officers, the distribution of fewer nutritious foods, and the dearth of sufficient menstrual as well as conception care facilities are the root causes of poor healthcare provisions for female inmates in India, suggesting the awful hygiene and health conditions among the women prisoners. This also indicates that the majority of the women in prison are malnourished. To provide female offenders with a respectable standard of living while serving their sentences, the living conditions in female prisons need to undergo significant reform. In light of the current circumstances and per the directives outlined in the New Prison Manual, the physical health of female convicts is being attended to, more or less, at each correctional facility.

On the other hand, the mental health concerns of female detainees are sometimes given less priority than they should be. Almost all model correctional facilities for women have virtually no room for regular counseling sessions. They cannot talk to anyone, contributing to their depression and mental instability. Most of the time, female inmates are housed in institutions explicitly designed for women located some distance away from their homes. As a result, it is not always feasible for relatives to see one another regularly. In addition, there are restrictions placed on the visits that families are permitted to make by the administration of the correctional facility. Again, most female detainees are of reproductive age. As a result, they are more likely to suffer from various physical and mental health problems, making providing additional medical support an absolute necessity. In addition, society views female convicts as having a significantly lower acceptance level than male convicts. Because of the cumulative effect of all of these elements, the inmates' mental health is negatively impacted, which can lead to anxiety disorders, depressive symptoms, and various other mental health issues. In addition, there is an additional difficulty with providing medical treatment for pregnant and recently delivered prisoners housed in correctional facilities. It is incredibly challenging for pregnant women to survive their pregnancies while incarcerated. This is typically the case because there is a shortage of female staff members, notable antenatal care providers, insufficient medical assistance, and poor social support. Therefore, the situation is considerably more difficult for female offenders to survive their various periods of incarceration due to the lack of appropriate medical care and medical infrastructure.

When the current situation in India is considered, it is possible to make the unequivocal assertion that the quantity of female criminals is expanding at a rate that is significantly faster

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

than that of male criminals. Because of this, Indian jails, which have traditionally been constructed with a primary focus on the needs of male offenders, will need to find a way to accommodate female detainees as well. During their time behind bars, women convict in India have no choice but to endure a lifestyle that is dismal, sick, and pitiful as a result of the severe lack of space in female prisons in comparison to the number of inmates that are housed there and the absence of women-friendly infrastructure within the country's prisons. Whether it be the availability of competent medical professionals to manage female-specific medical issues as well as consequent psychological conditions, or whether it be accessibility to sufficient sanitation facilities, or whether it be adequate prenatal care, the prison administration has failed terribly in practically every aspect. Even though there are various legislation and recommendations from the government, the indifference of prison administrators and challenges linked to funds have led to a precarious situation regarding the health of Indian female prisoners.

On the other hand, due to the conclusions of several studies concerning the health circumstances of women inmates, the government of India has revised the Prison Manual to reflect that several positive efforts have been made to ensure appropriate healthcare facilities. Since prison authorities in India are now subjecting inmates to regular physical examinations following government directives, conditions in the country's correctional facilities are gradually returning to a more normal state. In addition, facilities that provide care for pregnant women and the elderly have seen tremendous advancements compared to the past. However, the mental health of inmates is still a neglected concern, especially in this day and age, although it is a well-established fact that female criminals are more likely to exhibit signs of mental illness, despair, and suicidal impulses in comparison to male offenders.

GOVERNMENTAL INITIATIVES TO AMELIORATE THE CIRCUMSTANCE

Following an investigation into the findings of a subsequent survey and the accompanying suggestions, the Indian government has taken several steps to guarantee that female prisoners in Indian prisons can get appropriate and effective medical care while they are serving their sentences. According to the most recent version of the National Prison Manual, the government has requested that each institution's hospitals be divided into wards for female detainees. The government has also considered the possibility of carrying out routine health checks while strictly adhering to all applicable privacy requirements. These screenings would

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

check for diseases that are spread through blood or sexual contact, as well as mental illness and addiction-related conditions. The Chief Medical Officer of each of the prisons must make routine visits to their facilities, which is required by government mandate. There are also particular arrangements for elderly convicts and mentally unstable female inmates who need extra mental health counseling and therapy assistance.

Furthermore, suppose there needs to be more female medical officers. In that case, the authorities in charge of the correctional facility have been asked to work with the hospitals in the surrounding area to ensure that female convicts receive adequate medical checkups. Additionally, the government has proposed that female detainees be provided with food consisting of a specified number of calories and a nutritious intake to ensure that they maintain an acceptable level of health while incarcerated. In addition, the government's proposal for the prison manuals includes provisions for meeting the needs of female inmates concerning hygiene. Last but not least, because of the difficulties and constraints associated with housing a high number of female prisoners in Indian prisons, the government has also decided to award special clemency to female inmates in the years 2022 and 2023, contingent on the inmates' good behavior and adherence toward prison disciplinary action. Despite this, given the constrained resources (both in terms of financial and human resources) available, successful implementation of these plans and recommendations will need a significant amount of time.

JUDICIAL ACTIVISM

In **R. D. Upadhyay v. State of Andhra Pradesh**⁵, the Supreme Court of India set instructions for treating pregnant women jailed in correctional facilities. These recommendations address medical facilities that should be stipulated to pregnant women who are incarcerated, the nutritional requirements of pregnant women and their children, procedures for giving birth (pointing out that the woman ought to go on bail as frequently as practicable so that she can give birth outside the prison), and the custody of children who are incarcerated.

⁵ AIR 2006 S.C. 1946. Retrieved August 22, 2023, from <https://indiankanoon.org/doc/1258611/>

In the case of **State of Gujarat v. Jadav @ Jatin Bhagvanbhai Prajapati & Ors**⁶, the Gujarat High Court has adopted one of the recommendations found in R.D. Upadhyay about the issuance of bail to pregnant women so that they can give birth outside of the confines of the prison. After seeing the woman guilty of the crime, the Court, upon learning that she was carrying a child, deferred her prison term and allowed her to go free on bail for eleven months. As a result, she was allowed to not only give birth to her child outside of the confines of the correctional facility. At the same time, she was not being held there additionally to provide care for the infant during the first few months of its life. In addition, the Court ordered the correctional facility officials to comply with the woman's request to be allowed to keep her children with her until they reached the age specified in the applicable Jail Manual.

An undertrial woman prisoner named Hallo Bi lodged a petition for writs before the Madhya Pradesh High Court in the **Hallo Bi v. State of Madhya Pradesh** case⁷. In the plea, she asked the Court to order the state to give her permission to terminate her pregnancy. She claimed that her pregnancy resulted from her being coerced into sexual activity. Although the MTP Act does not call for judicial authorization under any circumstance, the request made by Hallo Bi for an abortion was sent to the Chief Judicial Magistrate by the jail authorities. The Chief Judicial Magistrate declined to grant the request. The writ petition was consequently submitted as a result. The decision of the High Court to allow the woman to terminate her pregnancy was based on the judgment of the Supreme Court in the case of **Suchita Srivastava v. Chandigarh Administration**⁸. In that case, the Supreme Court had determined that a woman's right to make decisions regarding her reproductive health is a component of personal autonomy guaranteed by Article 21 of the Indian Constitution. The High Court considered that decision to allow the woman to terminate her pregnancy. The Court determined that "forced prostitution" was equivalent to rape, and as such, it was included as one of the elements that must be met per Section 3 of the MTP Act to have a pregnancy terminated.

In the case of the **High Court on Its Own Motion v. State of Maharashtra**⁹, the Court noted that pregnant women form a similar group that includes incarcerated women. The Court concluded that under Article 21 of the Indian Constitution, all pregnant women enjoy

⁶ R/CR.A/652/2008. Retrieved August 22, 2023, from <https://indiankanoon.org/doc/55079225/>

⁷ 2013 (1) MPHT 451. Retrieved August 22, 2023, from <https://vlex.in/vid/hallo-bi-halima-vs-545978046>

⁸ (2009) 9 SCC 1 . Retrieved August 22, 2023, from <https://indiankanoon.org/doc/1500783/>

⁹ 12-Cri. SMP-1-2021. Retrieved August 22, 2023, from <https://indiankanoon.org/doc/79004584/>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

the fundamental right to make reproductive decisions, including aborting their pregnancies if they so choose. The Court ordered that a urine pregnancy test be given to every woman prisoner of reproductive age upon admittance to the facility. If the test result reveals that the woman is pregnant, the physician in charge is to tell her of her right to abort the pregnancy per the MTP Act. It was decided that as soon as a pregnant woman in prison expresses a desire to terminate her pregnancy, she ought to be promptly transferred to a hospital, and all aid should be offered to terminate her pregnancy. It acknowledged that a woman's choice to abort her pregnancy is not impulsive but rather one that has been "carefully considered" by the lady. In addition, it acknowledged the requirement to broaden the scope of the MTP Act's Explanation 2 to Section 3 so that it applies to married couples and any pair living together as if they were married. The conclusion that the High Court came to was that the human right to live with dignity, which is guaranteed by Article 21 of the Constitution, is the source of a woman's right to decide for herself whether or not she wants to have children and have her decision derived from that right. In addition, the Court stated, concerning international human rights legislation, that human rights are only bestowed upon a person at the time of their birth and that a fetus that has not yet been born does not have human rights. In doing so, it acknowledged a woman's bodily autonomy and the fact that she is the one whose rights take precedence in determining whether or not to have children and whether or not to continue carrying a pregnancy to term or to have it terminated.

In the case of **Jasvir Singh v. State of Punjab**¹⁰, a married couple filed a petition with the Punjab and Haryana High Court to implement their right to live together as husband and wife. The verdict reached by the judge was that the husband should be executed, and the wife should spend the rest of her life in prison. In addition to relying on international human rights principles, the Court concluded that the liberty of reproduction and visits from spouses is an aspect of the right to live with dignity, ingrained within the right to life protected by Article 21 of the Indian Constitution. The Court decided that detention does not negate a person's constitutional right to procreate. It did, however, note that the right to conjugal visits or procreation and a corollary to artificial insemination may be subject to reasonable constraints. As a result, restrictions could be imposed provided they comply with the "procedure established by law." The Court ordered the state of Punjab to establish a committee for reforming prisons and gave it the responsibility to devise a plan for conjugal prisoner visits.

¹⁰CRM-M No. 50944 of 2021, Retrieved August 22, 2023, from <https://indiankanoon.org/doc/147613542/>
For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

In **D.B.M. Patnaik v. State of Andhra Pradesh**,¹¹ The Supreme stated that:

"Convicts are not denuded of all the fundamental rights which they otherwise possess by reason of the conviction. A compulsion under the authority of law, following upon a conviction, to live in prison entails by its force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to practice a profession. A man of profession would thus be stripped of his right to hold consultation while serving his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold, and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by article 21 of the Constitution that he shall not be deprived of his life and personal liberty except according to procedure established by law."

In **Sunil Batra vs. Delhi Administration**¹², the Supreme Court stated :

"In our constitutional order, it is axiomatic that the laws do not swallow up the fundamental rights of the legally unfree, and as sentinels on the qui vive, courts will guard freedom behind bars, tempered of course by environmental realism but intolerant of torture by executive echelons. The policy of the law is beyond purchase by authoritarians glibly invoking the 'dangerousness' of inmates and peace in prison. Part III of the Constitution does not part company with the prisoner at the gate, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority".

CONCLUSION AND SUGGESTIONS

In India's correctional facilities, the state of affairs is steadily improving day by day in terms of the quality of accessible healthcare, the frequency of prisoners' medical screenings, and the level of care that is provided to any woman who suffers from any health issue. Nevertheless, mental health should be the primary focus at this time because, historically speaking, it has frequently been overlooked due to a deficiency in the necessary infrastructure and the required resources. Women inmates have a higher risk of developing mental illnesses, going through depressive disorders, and attempting to take their own lives because of the harsh conditions behind bars, including congestion, incarceration in remote locations, and the resulting isolation. The governing bodies have been determined to have not taken any suitable

¹¹1974 AIR 2092, 1975 SCR (2) 24. Retrieved August 22, 2023, from <https://indiankanoon.org/doc/353351/>

¹²1980 AIR 1579, 1980 SCR (2) 557. Retrieved August 22, 2023, from <https://indiankanoon.org/doc/778810/>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

precautions for preserving the state of cleanliness, which has led to morbidity and the transmission of illnesses. It will be of great benefit to begin regular sessions with counselors throughout all of the prisons to ameliorate the precarious mental health state in each of the facilities. In addition, frequent get-togethers with family will help alleviate their anxiety about being left out, which is essential to maintaining good mental health. Sanitation in its proper form is necessary to foster a culture of impeccable hygiene within the walls of a women's prison. Sanitary napkins that have been through the sterilization process must be made available to female inmates so that they can practice proper menstrual hygiene. Each cell requires a timely cleaning of the washbasin and the provision of clean and uncontaminated drinking water at all times. As a result, the outlook for the future of the health situation of female inmates in India appears to be positive, especially in light of the recent initiatives and efforts made by both the Indian government and the authorities of the country's prisons.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>