



ILE

LEGAL REVIEW

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



## ILE LEGAL REVIEW

APIS – 3920 – 0042 | ISBN – 978-81-964391-3-2

(Free Publication and Open Access Journal)

Journal's Home Page – <https://lr.iledu.in/>

Journal's Editorial Page – <https://lr.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://lr.iledu.in/category/volume-1-and-issue-1-of-2023/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://lr.iledu.in/terms-and-condition/>



## ARTICLE 14 AND INDIAN PRISONS: A CASE OF GENDER DISPARITY

**AUTHOR** – AYUSHI MISHRA, STUDENT AT MDU CENTRE FOR PROFESSIONAL & ALLIED STUDIES (MDU-CPAS), GURGAON

**Best Citation** – AYUSHI MISHRA, ARTICLE 14 AND INDIAN PRISONS: A CASE OF GENDER DISPARITY, *ILE LEGAL REVIEW (ILE LR)*, 1 (1) of 2023, Pg. 14-17, APIS – 3920 – 0042 | ISBN – 978-81-964391-3-2.

### Abstract

*The Indian Constitution is a shining example of equality and justice, as it embodies the fundamental ideas that guarantee the protection of individual rights. Article 14 of the Constitution ensures that all people are treated equally before the law and forbids discrimination based on a variety of factors. This is one of the fundamental rights protected by the Constitution. On the other hand, the treatment of male and female detainees within the Indian jail system reveals an unsettling reality: there is a large gender gap that continues to exist, which is in direct opposition to the spirit of Article 14. This article explores the gender-based discrepancies within the Indian prison system, shedding light on the challenges faced by women inmates.*

**Keywords** – Disparity, Article 14 – Equality, Inhumane conditions in prisons, Lack of consciousness (amongst women prisoners), Corrective Measures

### Introduction –

According to the National Crime Records Bureau (NCRB), the number of female prisoners in India at the end of the year 2021 was 22,918 while the capacity of the 32 existing women's jails in the country is enough to accommodate only 6,767 prisoners. As per the data, in 2021, only 15 states/UTs have jails exclusively meant for women in the country. These 15 states/UTs have a total of 32 jails with a capacity of 6,767 prisoners. Dr Vartika Nanda, prison reformer and founder of Tinka Prison Reforms told The Statesman that whatever is being done is insufficient and that more needs to be done. She also stated that "privacy is available for women prisoners, but the issue of space needs to be addressed, as space is available in women's jails but not in other jails, and there is a disparity between what men and women are given in the jails."

The inmates, especially women with children, have never got the care and attention from governments that are laid down in the

constitution as their fundamental rights, despite this being widely publicised during election rallies and manifestos. This lack only points out the tactics that the government uses to garner votes.

Following are the major issues that women prisoners face on a daily basis.

#### 1. Infrastructural segregation –

Separation policies and prison facilities in India show a striking divide. Although women are sometimes housed in their own wing or prison, they rarely have the same privileges as their male counterparts. Inadequate sanitation, healthcare, and living circumstances are all symptoms of this inequality. Such discrimination not only runs counter to Article 14's tenets, but also serves to further isolate women economically, socially, and psychologically within the criminal justice system.

#### 2. Rehabilitation –

The primary goal of the penal system is the rehabilitation of offenders in preparation for their successful readmission to society. However, it is notable that male and female inmates have different levels of access to rehabilitation programmes. When compared to male inmates, women in Indian prisons have fewer chances for redemption. Because of this discrimination, women in prison have fewer opportunities to change their ways, get new skills, and start again after serving their time. The lack of sufficient rehabilitation opportunities for female offenders is a clear violation of their right to equal protection under the law, as stipulated by Article 14.

### 3. Hygiene -

There is a considerable gender gap that exists within the system of healthcare that is provided in Indian prisons. It is common for female inmates to be denied access to gender-specific medical services, such as reproductive healthcare, counselling, and prenatal and postnatal care. The refusal to provide these necessary services to people on the basis of their gender contradicts the principles of equality and dignity that are guaranteed by Article 14. In addition, the lack of adequate sanitation facilities not only increases the likelihood of health problems, but it also violates the fundamental rights of female inmates.

### 4. Familial Duties -

Concerns about women's ability to fulfil their family responsibilities while incarcerated in India are heightened by the gender gap in the penal system. Many women behind bars are the major carers for their children, who therefore confront significant psychological and logistical difficulties as a result of their mother's incarceration. Unfortunately, many mothers and their children suffer because the jail system does not provide sufficient childcare, creating a vicious cycle that threatens their well-being and the rights of their children. This unfair treatment violates Article 14's promise to uphold the values

of equality and non-discrimination in order to protect women and their families.

### 5. Violence and Harassment -

Violence and harassment against women in Indian jails come from both convicts and personnel. There is an immediate need for thorough steps to safeguard the safety and security of female detainees in light of reports of physical, sexual, and emotional abuse. Article 14 guarantees human dignity and equality, therefore failing to address and prevent such violence is a violation of those principles. It is crucial to provide all inmates, regardless of their gender, with a safe and welcoming prison environment that protects their rights and keeps them healthy.

### 6. Re-integration into society -

In Indian jails, men and women are treated differently during and after their sentences have ended. Due to persistent social stigma, female ex-offenders confront unique obstacles to full reintegration into society upon their release. The cycle of marginalisation and recidivism is reinforced by the absence of career possibilities, societal prejudice, and community support for ex-offenders. Comprehensive reintegration programmes and support networks designed around the needs of female ex-offenders are needed to address this imbalance. India can preserve Article 14 ideals and aid in prisoner rehabilitation and reform by providing all inmates with equal access to reintegration programmes.

### Case Study -

A vivid example of an inmate Tulsi, who was born in Nepal, was sentenced to life in jail after she was accused of murdering her husband with the assistance of her nephew.<sup>15</sup> The only piece of evidence that could be used against the mother of three was a confession statement that she had written after being subjected to

<sup>15</sup> Roohi Narula, Patriarchy And The Indian Jails: The Plight Of Female Prisoners In India, Feminism In India, <https://feminisminindia.com/2018/09/05/patriarchy-female-prisoners-india/>

severe forms of torture. Tulsi remained incarcerated due to her inability to get money and an education. She stated that she was unaware of her entitlement to free legal assistance and that the only reason she was acquitted in 2010 was that the government provided her with free legal representation.

This case tells us that a large number of other women, similar to Tulsi, were uninformed of their right to legal counsel and also asserted that they confessed under duress from authorities. Thus, it becomes clear that female prisoners face more obstacles within the prison system than their male counterparts who have access to certain resources in the prison system.

According to the findings of research that was conducted on female convicts and their children in the state of Uttar Pradesh (UP), children who remain with their moms in jails or in state institutions while their mothers serve time in prison are more likely to engage in criminal behaviour in order to survive in later stages of life. At the end of the year 2014, there were around 1800 children that were being raised in prisons.

As per the India Spend's report "*As many as 1,320 children (73%) were living with under-trial mothers. Uttar Pradesh had the highest number of children growing up in prisons, 428, followed by West Bengal (298) and Bihar (166). Growing up in restricted spaces, children sometimes miss any sort of education and may not be able to recognise what is obvious to other children, such as the difference between an elephant, a needle and a tractor, BBC reported in November 2005*".<sup>16</sup> The rationale behind allowing children to grow up in the confines of prison is still being debated.

The criminal justice system can be made fairer if inequities in how female and male inmates are treated are eliminated.

### Way forward –

The criminal justice system can be made fairer if inequities in how female and male inmates are treated are eliminated. These can be done by ensuring these points are carried out –

#### 1. Gender-sensitive policies –

Policies and programs that are gender sensitive: Conceive of and put into action policies and programs that are gender specific, and that take into account the particular requirements and conditions of female inmates. This involves giving access to mental health treatments, trauma-informed care, and gender-responsive healthcare options in the healthcare system.

#### 2. Gender Bias in sentencing –

Examine and resolve any gender bias in sentencing processes that may lead to differences in the treatment of female convicts in order to eradicate gender prejudice in sentencing. This entails ensuring that all individuals have equal access to legal representation, encouraging fairness and impartiality in court judgments, and examining sentencing standards for any biases.

#### 3. Alternatives to incarceration –

The development and expansion of community-based alternatives to jail for non-violent female offenders should be prioritized as part of efforts to promote alternatives to incarceration. This can include programs that divert people away from criminal conduct, initiatives that promote rehabilitation, and probation services targeted at minimizing recidivism and treating the underlying reasons for criminal behaviour.

#### 4. Investing in rehabilitation –

Expanding women's access to educational, vocational, and skill-building programs will make it easier for them to successfully reintegrate into society once they are released from jail. This involves making available chances for job training, counselling, and other support services with the goals of improving

<sup>16</sup> BBC UK, Helping India's Prison Children, [http://news.bbc.co.uk/2/hi/south\\_asia/4354712.stm](http://news.bbc.co.uk/2/hi/south_asia/4354712.stm)

employment prospects and lowering the probability of the individual committing another crime.

#### 5. Prison Conditions –

Improve female inmates' access to fundamental human rights-compliant services and amenities. This involves supplying enough personal hygiene items, restrooms, and privacy, and creating a safe, secure, and harassment-free space. This can be taken care by –

- Make sure that all female inmates have free access to basic hygiene items including tampons, pads, soap, toothpaste, and toilet paper. Maintaining personal cleanliness and respect requires a steady supply of these goods.
- Clean, secure, and well-supplied restrooms should be built and maintained for inmates at all-female correctional facilities. Facilities for private and effective toilet use, as well as showers and places to wash up, are included here.
- Female inmates should be afforded the same respect for personal space and privacy as their male counterparts. This can be accomplished by providing separate spaces for sleeping (either in individual beds or with suitable dividers) and grooming (dressing and bathing). Confidential conversations with loved ones and legal advisors are likewise protected by this policy.
- Prevention of and response to harassment, abuse, and violence in female correctional facilities requires the establishment of stringent regulations and procedures. Staff should be trained on gender sensitivity and proper behaviour, complaint reporting and resolution channels should be established, and compliance should be monitored and enforced on a regular basis.

#### Conclusion –

The persistent gender discrepancies that exist inside the Indian jail system in relation to legal help, abuse, and harassment, in addition to the obstacles that are experienced following reintegration, highlight the critical need for complete reforms. It is necessary to take a holistic approach that addresses these systemic difficulties in order to uphold the equality and non-discrimination ideals that are enshrined in Article 14. It is possible for India to build a prison system that complies with the constitutional mandate of equal protection before the law.

This may be accomplished by ensuring that all inmates have equal access to legal counsel, maintaining a high level of safety and security within prisons, and assisting inmates in making a successful transition back into society. Sufficient resources, trained staff, and constant monitoring to guarantee compliance with human rights norms are essential to improving prison conditions for female inmates. Human rights specialists and organizations may be a great resource in this regard, therefore it's important to work with them. In the end, it's vital for the rehabilitation and effective reintegration of female convicts to create an atmosphere that respects their dignity, privacy, and well-being. It is only through concerted efforts and reforms that the Indian criminal justice system will be able to properly honour the principles of Article 14 and ensure that all jailed individuals, regardless of their gender, are afforded equal treatment and chances.

As the 8<sup>th</sup> Secretary General of the UN has quoted that *"achieving gender equality requires the engagement of women and men, girls and boys. It is everyone's responsibility"*, India should instil in itself an arena where collaboration between the major players and ordinary citizen can lead to the upliftment of the women of the country.