



INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 4 | Issue 3 | 2025

Art. 80

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Recommended Citation

Rakshith B.V and Dr. Pelasur Chandra Kumar Swamy, *Role of Judiciary in Safeguarding Women Prisoners' Rights in India*, 4 IJHRLR 1144-1155 (2025).
Available at www.humanrightlawreview.in/archives/.

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Role of Judiciary in Safeguarding Women Prisoners' Rights in India

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Manuscript Received
17 June 2025

Manuscript Accepted
18 June 2025

Manuscript Published
19 June 2025

ABSTRACT

Safeguarding the dignity and rights of women prisoners is essential to uphold the idea of equality, justice as per the Indian Constitution and "rule of law". Protection of basic and fundamental rights of every citizen, including prisoners is one of the most significant primary responsibilities of the authorities. In this context, the judiciary plays a critical role in upholding the rights of women prisoners in India as provided by the Constitution. Managing gender-specific requirements of women prisoners and prevention of exploitation and abuse within the periphery of prisons is essential to make sure that their fundamental rights such as right to dignified life, access to proper healthcare and others are not violated. Judiciary further can ensure effective enforcement of international aspects related to human rights (HR) and help promote reformatory justice through judicial interventions. This article analyses such aspects to provide a comprehensive idea regarding the role of judiciary in safeguarding the rights of women prisoners in India with specific reference to The Prisoners Act, various constitutional provisions and PILs.

KEYWORDS

Judiciary, UNHRC Constitution, Female prisoner, Constitutional provisions, PIL, Right to life, Healthcare, Hygiene, Maternity care, Custodial torture.

1. INTRODUCTION

The rights of female prisoners in India are primarily based on the Indian Constitution, certain judicial pronouncements and

international norms and conventions. These rights ensure safety of women prisoners in India as it can be noted that women prisoners are extremely vulnerable to exploitation in various forms and custodial torture. Upholding security and dignity of women prisoners and restriction on arbitrary treatment, discrimination and violence are the prime objectives of these rights upheld by the above-mentioned functions of judiciary, Constitution and international norms.¹ Moreover, ensuring that female prisoners are treated humanely at all conditions is ensured through these constitutional laws, Acts and norms as well. In this context, it must be mentioned that women prisoners are entitled to non-discrimination and the right to equality. Gender justice in India is sustained through "Article 15(1), 16(2) and 42" which ensures that an individual is protected from injustice such as gender bias, unemployment, inequality and others.²

Even for female inmates this becomes highly relevant as Articles and Acts ensuring gender justice in a comprehensive form ensures that inmates are able to live a life of dignity in prisons as it is considered their fundamental right. The right to efficient medical care and health and the right of mothers as pregnant inmates must be protected as well. The right to rehabilitation, fair trial and legal aid is necessary to be protected as well. This article analyses these rights of female inmates in critical detail in the Indian context and evaluates the way judiciary is responsible for safeguarding such rights for female prisoners. Additionally, every female inmate is entitled to right to life and protection from custodial violence and sexual harassment.³ Furthermore, female prisoners in India are entitled to dignity and privacy as well. Considering the international regulations, India is noted to abide by the provisions provided by UNHRC, Nelson Mandela Rules, Bangkok Rules and CEDAW which helps to protect the rights of women in Indian prisons.

2. PROTECTION OF WOMEN PRISONERS BY UNHRC

"United Nations Human Rights Council" (UNHRC) is noted to play a key role in protecting and promoting the rights of female prisoners all over the world through developing effective standards, instruments and taking necessary initiatives, monitoring the implementation of such standards and initiatives along with taking measures in case of a violation. UNHRC promotes policies for prisons that are gender sensitive and

¹ MEENA, MS AVANTIKA. "HUMAN RIGHTS OF PRISONERS IN INDIA LEGAL SYSTEM-A STUDY." (2024): 23-33.

² Mishra, Bibhanshu, et al. "Right to Equality and Gender Justice in India." *Jundishapur Journal of Microbiology* 15.1 (2022): 4257-4264.

³ Mateen, Abdul. "Behind Bars: An In-depth Analysis of Women Prisoners in India." *Kurukod Journal of Education and Social Science* 2.1 (2024).

developed “United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures” popularly known as the Bangkok Rules.⁴ Moreover, UNHRC addresses various issues such as discrimination, violence and certain unique requirements of indigenous women, mothers and pregnant women inside the prison or in detention. In this regard, it must be mentioned that UNHRC is not the direct legislator of such rules and regulations for female prisoners, however, it enforces and supports norms related to HR that are primarily pertinent to the overall treatment of female prisoners through various recommendations, reports and resolutions.

UNHRC advocates for several gender-specific standards and promotes the adoption of international standards that are customised towards the specific requirements of women prisoners. The Bangkok Rules, a “resolution adopted by the UN General Assembly on 21 December, 2010”, mentioned above, serves as the most comprehensive and significant UN catalogue for the treatment of female prisoners.⁵ It further provides “non-custodial measures for women offenders” with several commentaries. This emphasizes on various gender-specific services related to healthcare, especially within the context of hygiene, mental health, pregnancy and others. It protects the rights of female prisoners against violence and abuse and provides necessary disciplinary procedures in case of violation. It further emphasizes on the access of female prisoners to various reintegration programs and rehabilitation processes. Additionally, it has provisions to ensure care of offspring of convicted mothers serving time in prison. The UN ensures that all its member countries adopt and implement the “Bangkok Rules” effectively.

UNHRC further has reporting and monitoring mechanisms to uphold female prisoners’ rights. Special rapporteurs are assigned to analyse cases of violence, arbitrary detention and torture against women in custody.⁶ These specialised bodies are responsible to effectively investigate as well as report the abuses faced by females during detention. Bodies determined by UNHRC are further responsible for visiting various member countries to

⁴ Van Hout, Marie Claire, Simon Fleißner, and Heino Stöver. “Women’s right to health in detention’: United Nations Committee Observations since the adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).” *Journal of Human Rights Practice* 15.1 (2023): 138-155.

⁵ “The Bangkok Rules” (2010) <https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf>

⁶ Sveaass, Nora, and Felice Gaer. “The Committee Against Torture tackles violence against women: A conceptual and political journey.” *Journal on Rehabilitation of Torture Victims and Prevention of Torture* 32.1-2 (2022): 177-192.

identify violations of female prisoner's rights and encourage the responsible governments of such member countries to take necessary measures and corrective actions against these violations of prisoners' rights. Moreover, UNHRC further propagates the promotion of transparency and accountability in the overall prison systems and correction facilities to make sure that basic HR of prisoners are upheld and there is no infringement in any form of such rights. Thus, UNHRC promotes prison reforms and reports prison conditions to international councils to ensure security and safety of women prisoners.

UNHRC is held responsible for the review of adherence to the ICCPR, i.e. "International Covenant on Civil and Political Rights", CAT, i.e. "Convention Against Torture" and CEDAW, i.e. "Convention on the Elimination of All Forms of Discrimination Against Women" by the member States. These treaties primarily uphold the principles of humane treatment of women, ensure protection against torture, right to dignity and health and upholds equal treatment before law. In this context the UN body "Committee against Torture" comprised of "10 independent experts" can be considered who monitors the implementation of CAT regulations and other inhumane, degrading and cruel punishment or treatment by various State parties.⁷ It gives specific focus to female prisoners and ensures that women specific vulnerabilities and needs inside prisons and correction facilities are rightly addressed making sure that female inmates do not suffer from any form of mistreatment, abuse or torture inside women prisons.

UNHRC is further responsible for conducting regular and periodic reviews related to HR conditions in its member States. Conditions of women prisons often become critical components of such reviews urging nations to develop gender-specific and sensitive rules and policies for prisons, facilitate better training of prison staff, especially for women prisons and improve the overall infrastructure of prisons and correctional facilities to make sure that HR of prisoners are not violated in any form. Studies have established that there is a significant lack of "gender-responsive healthcare programming" in women prisons.⁴ Moreover, there is insufficient "routine scrutiny" of the "unique health rights assurances" for women in detention settings globally.⁴ However, the female prisoner population is on the rise as "more than 740,000 girls and women" remains in detention centres in 2020.⁴ UNHRC promotes that with increase in female prisoners, the conditions of detention facilities and prisons need to improve as

⁷ UNHRC. " Committee against Torture."
(ND) <<https://www.ohchr.org/en/treaty-bodies/cat>>

well to accommodate female prisoners and meet their basic needs.

UNHRC through the “Office of High Commissioner for Human Rights” helps with capacity building in women prisons as well by developing guidelines and providing training to the prison administrators which ensures that the basic rights of female prisoners are addressed effectively. The “manual on human rights training for prison officials” facilitated by the UN provides necessary information on HR standards which is relevant for prison officials and encourages skill development relevant to the “transformation of such information into practical behaviour”.⁸ It helps sensitise the prison staff regarding their responsibility in protecting HR and helps reinforce the respect of such officials in fundamental HR and human dignity. It further gives support in drafting policies and prison laws that coincide with the standards of international HR. Several challenges have been highlighted by the UNHRC in this context as well such as inadequate menstrual hygiene and healthcare for female prisoners, discrimination against LGBTQ+ and pregnant inmates, gender-based violence, poor sanitation and overcrowding in female prisons and others.⁹ Member States are urged to take necessary steps in these regards to improve the overall condition of women prisons globally.

3. ROLE OF JUDICIARY IN PROTECTING WOMEN PRISONERS

As per The Prisons Act, 1984

The High Courts (HC), the “Supreme Court of India” (SC) and the judiciary in general are the custodians of the Indian Constitution and often play a critical role regarding the protection of women prisoners’ rights. SCI and HCs issued multiple directions and even interpreted laws such as “The Prisons Act, 1984” for authorities, police and prison staff to ensure just and fair treatment of women in custody and safeguard the rights of such prisoners.¹⁰ Section 4 of this Act provides mandate for separate accommodation for prisoners based on gender. Additionally, Section 15 of this Act mandates that only female waders are allowed inside the women prison facilities as female prisoners must be supervised by women prison staff. Section 27 of this Act provides special provisions with regards to pregnant female inmates where it mentions that such women must be provided special healthcare and treatment. However, this Act, in some context, may be inconclusive and

⁸ OHCHR. "HUMAN RIGHTS AND PRISONS". (2005). <<https://www.ohchr.org/sites/default/files/Documents/Publications/trainingle.pdf>>

⁹ Fettig, Amy. "Menstrual equity, organizing and the struggle for human dignity and gender equality in prison." *Colum. J. Gender & L.* 41 (2021): 76.

¹⁰ THE PRISONS ACT, 1894

vague.

Therefore, the judiciary and courts interpret these Sections and the Act within the context of the fundamental right mentioned in Article 21 of the Indian Constitution specifying the “right to life and dignity” enhancing the significance of humane treatment within correctional facilities. In this context the judgement of “Sheela Barse vs State Of Maharashtra on 15 February, 1983” can be considered where the SCI mandated that separate accommodation facilities such as lock ups and female prison staff and police officers must be provided for female inmates.¹¹ The judgement further established that female inmates have the right to regular access to lawyers, family members and legal aid. Moreover, as per the interpretation of the judiciary and courts of “The Prisons Act, 1984”, women prisoners have the right to “female medical officers” conducting medical examinations. Moreover, although not gender-specific, this Act addresses the rights of prisoners to hygienic shelter, food and medical facilities.

The SCI in the “R.D. Upadhyay vs State Of A.P. 2006” case, in view of “The Prisons Act, 1984” held that children and pregnant women in prisons need special medical attention and care.¹² In this regard, the courts further mandated that Indian women jails must provide safe diets, crèche facilities and child-friendly provisions for female inmates. The SCI further issued “Model Prison Manual, 2016” including gender-specific provisions regarding menstrual hygiene, privacy in bathing and search, lactation and pregnancy related care facilities and education for effective rehabilitation and vocational training for inmates. Even though not all of these provisions are gender specific, it alleviated the overall conduct of female prisoners in Indian jails, correctional facilities, detention centres and prisons. The role of judiciary becomes evident as the judiciary oversees the implementation of these standards, mandates and regulations for cases related to prison reforms. In this regard, it can be argued that the judiciary has the oversight and monitoring powers regarding these Acts and laws.

As per The Constitutional Provision

The Indian Judiciary expands the protection of female prisoners by effectively interpreting the existing constitutional laws and provisions within the context of women prisoners and conditions of Indian prisons. Courts have interpreted “Articles 14, 15(3) and 39(e)” to deliver gender-sensitive justice to female prisoners.¹³ In

¹¹ Sheela Barse vs State Of Maharashtra on 15 February, 1983

¹² R.D. Upadhyay vs State Of A.P. & Ors on 13 April, 2006

¹³ Kumar, Adarsh. "Examining the Role of the Judicial System in Upholding Women's Human Rights: a Critical Analysis of the Trial Process." *Available at SSRN 4840646* (2024).

this regard, it must be mentioned that the role of the Indian judiciary in interpreting constitutional provisions in such a manner to make sure that prison conditions facilitate minimum standards related to safety, health and dignity is great. In this regard the judgement given during the case of “State Of Andhra Pradesh vs Challa Ramkrishna Reddy, 2000” can be considered where the court held that state agents must respect the fundamental rights of all prisoners, only except for lawful restrictions on such matter and it reinforced the liability of the State for custodial violations of such rights and deaths of inmates.¹⁴ Additionally, the judiciary interpreted Article 21, i.e. “right to life and personal liberty” within the context of female prisoners as well.

As per the judiciary, no individual, including prisoners can be deprived of their “right to life and personal liberty” except as per the “procedure established by law”. In this context, the case “Shri D.K. Basu, Ashok K. Johri vs State Of West Bengal, State Of U.P on 18 December, 1996” can be considered where the judiciary highlighted the brutal aspects related to custodial torture and its prevention, especially within the context of female inmates.¹⁵ The judiciary, while interpreting constitutional provisions related to fundamental right provided through Article 21 established that every prisoner has the right to a dignified life and humane treatment. Additionally, access to necessary healthcare, treatment and hygienic facilities, including menstrual hygiene in the case of women is extremely necessary. Moreover, sexual harassment and abuse within prison confinement becoming a significant issue demanded attention from the judiciary. Hence, in the case “State Of Maharashtra Etc. Etc vs Som Nath Thapa, Etc. Etc on 12 April, 1996” the courts have highlighted the relevance of preventive measures and legal remedies to deal with issues related to custodial rape of women.¹⁶ additionally, courts highlight the relevance of non-discrimination, equal and fair representation of women by interpreting Article 14.

Additionally, Article 15(3) established that special provisions can be developed by the State authorities for children and women. This encompasses female prisoners in Indian prisons as well. In line with this Article, the Indian judiciary supports special protection and affirmative actions for women prisoners such as providing maternity care, necessary support, facilities and care for children accommodating with convicted mothers and developing

¹⁴ State Of Andhra Pradesh vs Challa Ramkrishna Reddy & Ors on 26 April, 2000

¹⁵ Shri D.K. Basu, Ashok K. Johri vs State Of West Bengal, State Of U.P on 18 December, 1996

¹⁶ State Of Maharashtra Etc. Etc vs Som Nath Thapa, Etc. Etc on 12 April, 1996

women-specific correctional facilities and jails and appointment of female jail staff and others. In this context, the judgement in “R.D. Upadhyay v. State of A.P, 2006” can be considered where the judiciary held that pregnant female prisoners are entitled to healthy diet, eating facilities and necessary maternity care during prenatal as well as postnatal stage.¹² Additionally, in line with Article 19, courts have propagated that female prisoners should have access to lawyers and can communicate with their family members, access books, pursue education for effective rehabilitation. In the “Re-Inhuman Conditions In 1382 Prisons vs Vs. on 3 October, 2016” the SCI held that “Model Prison Manual” must be implemented in prisons.¹⁷ This propagated gender-specific hygiene, rehabilitation and health service along with complaint mechanisms and safe custody especially for female prisoner

Impact of PIL

The judiciary played a progressive and significant role in upholding women prisoners' rights mainly by using PIL and through “judicial activism”. PILs have ensured that courts can take up problems and issues related to women prisoners being affected without specific individual complaints. It helped promote structural reforms in the overall prison administration process and ensured state accountability, policy changes and transparency in the prison systems. In this context, PILs such as “Sheela Barse vs State Of Maharashtra on 15 February, 1983” can be considered which helped shed light on the harsh reality of women prisons in India and highlighted the harsh conditions that women prisoners face within the jail facilities such as lack of basic healthcare, hygiene, basic amenities, denial of fundamental rights and of course overcrowding.¹¹ This damages the fundamental right of female prisoners ensured by Article 21 of the Indian Constitution. PIL brings attention of the judiciary to such matters which then provides proper guidelines and regulations to improve the overall condition of jails for female prisoners.

PIL further can help uphold the right of detainees to timely justice through fair and speedy trial. In the “Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar, Patna on 9 March, 1979” case, judiciary upheld the right of detainees to a speedy and fair trial which in turn has helped the female prisoners that were usually held in “pre-trial detention” for significant period of time.¹⁸ Additionally, on multiple occasions, PILs has helped address issues related to custodial violence such as sexual assault,

¹⁷ Re-Inhuman Conditions In 1382 Prisons vs Vs. on 3 October, 2016

¹⁸ Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar, Patna on 9 March, 1979

physical abuse and other abuse and trauma prisoners are put forth. In such cases, PILs promote effective legal safeguards and necessary judicial intervention to make sure that rights of female prisoners are not violated in any form. Prisoners often lack necessary legal means and knowledge to take a stand for their own fundamental rights. Therefore, the relevance of PILs in this context have increased as it facilitates timely judicial intervention in addressing issues faced by women prisoners.

4. CONCLUSION

This article has rightly pointed out the role of judiciary and the relevance of judicial intervention in safeguarding the rights of female prisoners in India. It is noted that India follows several international provisions relating to prisoners' rights such as Bangkok Rules, guidelines provided by UNHRC and others. Indian judiciary in this context ensures that these regulations and provisions are rightly implemented and followed. Moreover, UNHRC oversees the implementation of these provisions in the member States to uphold the rights of women prisoners. These guidelines are primarily focused on the safety of females inside a prison facility, access to necessary healthcare, hygienic facilities, menstrual hygiene upholding the fundamental rights of female prisoners. On the other hand, the judiciary helps interpret "The Prisons Act, 1984", various constitutional provisions such as rights provided through Article 14, 15(3), 39(e), 21 and others to ensure that the rights of female prisoners are not violated. Additionally, through PILs relevant issues of prison and its staff are highlighted in front of the judiciary upon which the judiciary comments and provides directives to the State authorities to take necessary actions. Through judicial intervention it is ensured that female prisoners are provided separate facilities, custodial torture in every form is avoided and there is female prison staff for female prisons. Moreover, judiciary ensures that proper healthcare facilities, maternity care, prenatal and postnatal care is provided to pregnant female prisoners.

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