

# MOTHERHOOD BEHIND BARS IN INDIA UNDERSTANDING THE LEGAL PROVISIONS REGARDING THE RIGHTS OF PREGNANT WOMEN IN PRISONS

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## Abstract

In practically every way, from basic amenities to fundamental human rights, prisoners are a country's most neglected citizens. Additionally, those inmates who are expecting a child while they are in captivity find it to be considerably harder. Over the past few decades the number and proportion of women who are incarcerated in India has dramatically increased as a result of mass incarceration policies. Women who are behind bars have a broad range of health-related demands as a result of their underprivileged upbringing. Pregnant women, a fragile, high-risk demographic, are particularly affected by this. Although recommendations have been made for pregnant women who are incarcerated, such as prenatal screening, the provision of dietary supplements, regular healthy meals, and nutritional counseling, jail regulations and health care procedures frequently ignore these recommendations. This paper highlights the different challenges faced by pregnant women in prisons and the policies, rules and steps taken by the government to accommodate the special requirements and unique needs of these inmates and their offspring, who are most susceptible and defenseless in these circumstances.

**Keywords:** Women Prisoners, Pregnancy, Childbirth, Rights, Criminal Justice System, etc.

## INTRODUCTION

The greatest virtue in a woman's life is said to be having children or planning to have children, but can we say the same of prisoners or criminals who are awaiting trial? Although India is a democratic republic and a welfare state with equal rights guaranteed by its constitution, is the same constitution also upheld by its criminal justice system? Even though India's prison and penitentiary systems are reformatory rather than punitive because it is a welfare state and Prison is used as a means of self-reform and reintegration for prisoners and those awaiting trial. It is difficult to say whether equality towards the prison inmates exists.

The Indian prison system is plagued by a number of issues, including overcrowding in the cells, aging, decaying infrastructure, unhygienic sanitation facilities and lack of nutritional food., therefore keeping pregnant women and their unborn children in these facilities does not uphold their "rights" as human beings. It is difficult to imagine any reformatory work being done under such a difficult circumstance. In spite of Article 21 of the Constitution of India granting not only the right to life, but also granting the right to live with dignity, resources and opportunities, women prisoners are discriminated against in the prisons.

The women prisoners who are Pregnant and postpartum experience bigger challenges in comparison to other women prisoners in the prison. Pregnant and postpartum women in prison have to adjust in a setup which is predominantly designed for men, housing largely male staff, lacking antenatal care facilities, having very poor social support, inadequate amenities of daily sustenance such as maternity wear, sanitary napkins, etc living with unaddressed parenting apprehensions, leading to an unconceivable physical as well as psychological distress as she is coping with the changes her body and mind are going through as her pregnancy progresses.

Pregnant women who are incarcerated are a minority group with special needs who must also manage higher stress levels. It is critical to recognize that a large portion of

the women incarcerated have experienced trauma and come from diverse, complicated backgrounds that often include domestic violence, homelessness, poverty, substance misuse, inadequate education, and neglected parental care. They are susceptible to transgenerational stress because of these vulnerabilities. Because kids do not have their mothers or counselors at their sides as they would in the community, mothers' worries and parental concerns about being in prison may go ignored. Negative pregnancy outcomes and poor antenatal care compliance may be caused by maternal stress, depression, and anxiety. Pre-term birth, spontaneous abortion, and low birth weight all carry increased risks.

## CAN PREGNANT WOMEN BE ARRESTED?

It is important to find out what the provisions of the law says regarding the arrest of a woman who is pregnant. Pregnant women can be arrested if a case is brought against them, and the law contains nothing that forbids this. The legislation does, however, specify how women should be treated both during and after an arrest. In addition to the typical measures like being arrested by a female officer, being separated from the male inmates, avoiding being arrested after sunset, etc. the regulations clearly provide that all essential prenatal and postnatal care should be provided to females who are imprisoned, the law also stipulates that pregnant women should only be restrained as a last option. Never should their safety or the safety of their unborn child be in jeopardy. Never should a woman be constrained while giving birth.

The jail manual says that proper pre-natal and ante-natal care shall be provided to the prisoner according to the advice of a qualified medical officer. Additionally, adequate and timely food and nutritional supplements shall be provided to pregnant women.

## PROBLEMS FACED BY PREGNANT PRISONERS

A prison is not a place where anyone would like to be, let alone give birth there. In spite of the constant reforms and changes that are being brought about in the Indian Prison system and the Criminal Justice System, the situation, condition and environment of the prisons is far less than suitable to give birth and raise a child. The prisons in India is an infrastructure with cramped up and over crowded cells, shoddy and old dilapidated building structures, unhygienic and unsanitary conditions etc. which may seem justified for to the normal civil given their general mindset that people who commit crimes do not deserve anything better than this. But the truth of the situation is that even though a prisoner commits a crime and is punished for the same, it in no manner means that their basic Human Right to live with dignity should be taken away from them.

The above mentioned right has been highlighted in the case of *State of Andhra Pradesh V. Challa Ramkrishnan Reddy*<sup>1</sup>, it was held that the prisoners are also a person and they will not lose their basic constitutional rights. The Case stated that a "prisoners whether a convict, under- trial or detenu, does not cease to be a being human being and while lodged in jail, he enjoys all his FRs as mentioned by the constitution including Article 21-right to life."

Every human right, including the right to independence and dignity, is guaranteed to a prisoner as part of their obligation to be treated as such. Realizing that a pregnancy while in prison and giving birth while locked up is a grave breach of reproductive justice is crucial. Any child has the right to be born in an atmosphere that is supportive and

conducive for their growth and wellbeing. Sadly, these rights are not even fully acknowledged, let alone well safeguarded. The systematic unfairness that these weak women experience may only be the tip of the iceberg; it is possible that the intended rehabilitative and restorative goals of prison will never materialize due to this injustice that exists in the prison systems.

The general problems faced by women are:

### **1. Poor Living Conditions**

In the case of *Upadhyay RD. State of AP and ORS*<sup>2</sup> On 13th April, 2006, a three Judges Bench held that “children of women prisoners who are living in jail require additional protection”. The Supreme Court of India took notice of the apathy of children living in jails and thereby laid down guidelines to improve the living condition of the children and strengthening the pregnant woman inmate’s rights. When the issue of poor or substandard living conditions of women inmates is raised and suggestions are made to improve those conditions are given, they are not done with the intention to provide a luxurious living facility to the women inmates especially the pregnant inmates. But a request is made to ensure that the living conditions are atleast just and humane and not unsanitary and unhygienic.

### **2. Poor Quality of Perinatal Care Inside Prisons**

Care given throughout pregnancy, labor, delivery, the postpartum period, and the neonatal stage is referred to as perinatal care. The foundation of a healthy adulthood is good perinatal care. An early start and quality perinatal care will guarantee a safe and healthy pregnancy and birth. Incarcerated pregnant women are a minority population inside the prisons, they are the prison population that has very specific needs. They also are the ones who have to handle a lot of stress due to the conditions they are subjected to. Maternal stress, depression and anxiety may cause women to have poor and adverse pregnancy outcomes.

The prison administration and staff in India is not well sensitized to deal with and provide adequate care to pregnant women or women who have just given birth. They are also ill equipped to take care of the new born children. Studies also show that most jails do not screen for pregnancy nor is there any mandatory standard for pregnancy-related care that they follow.

### **3. Physical Mistreatment**

The one area where prison administration has consistently failed is inflicting physical harm and abuse on inmates. Numerous prisoners also experience sexual assault at the hands of staff, administrators, or other prisoners. This also results in inmate pregnancies. Such incidents happen as a result of inadequate infrastructure and a poor prisoner to official ratio. In a scenario like this, women inmate may not be aware of her pregnancy sometimes leading to miscarriage causing mental trauma to the woman.

### **4. Nutritionally Deficient Food**

As per the Prison Manual, the calorie intake and variety of food is to be increased for women prisoners who are pregnant or lactating and require more protein and minerals than usual. Such women are entitled to receive additional milk, sugar, vegetables, fish/meat, curd, fresh fruit etc. Prison visits have shown that the varied calorie definitions for men and women are frequently used as an excuse to feed women

convicts significantly less than men prisoners. Most jails are said to serve food of generally decent quality, yet there have been complaints about the unclean state of the kitchens and dining halls. In reviewing the implementation of the Mulla Committee Recommendations, the Ministry of Home Affairs observed that dining spaces are often considered the most neglected areas in prisons.<sup>3</sup>

## 5. Poor Pregnancy Outcomes

Incarcerated women frequently have risk factors for poor pregnancy outcomes. Female offenders often neglected their own health in the community prior to incarceration.<sup>4</sup> Compared with the general population, incarcerated women are at higher risk for having premature delivery and low birth-weight infants.<sup>5</sup> The knowing that they will be parted from the baby shortly after birth may exacerbate the distress experienced by expectant mothers.

## RIGHTS OF PREGNANT WOMEN IN PRISON

In the light of the observations made by the Supreme Court of India, the rights of prisoners are clearly spelt out. In this respect, the All India Committee on Jail Reforms, 1980-83 has suggested as under:

### Rights of Prisoners:<sup>6</sup>

#### (A) Right to Human Dignity

- (i) Right to be treated as a human being and as a person; this right has been stressed and recommended by the Supreme Court of India which has categorically declared that prisoners shall not be treated as nonpersons;
- (ii) Right to integrity of the body; immunity from use of repression and personal abuse, whether by custodial staff or by prisoners;
- (iii) Right to integrity of the mind; immunity from aggression whether by staff or by prisoners;
- (iv) Right to non-deprivation of fundamental rights guaranteed by the Constitution of India, except in accordance with law prescribing conditions of confinement.

(B) Right to Basic Minimum Needs Right to fulfillment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment.

#### (C) Right to Communication

- (i) Right to communication with the outside world;
- (ii) Right to periodic interviews; and
- (iii) Right to receive information about the outside world through communication media.

#### (D) Right to Access to Law

- (i) Right to effective access to information and all legal provisions regulating conditions of detention;
- (ii) Right to consult or to be defended by a legal practitioner of prisoner's choice;

- (iii) Right to access to agencies, such as State Legal Aid Boards or similar organisations providing legal services;
  - (iv) Right to be informed on admission about legal rights to appeal, revision, review either in respect of conviction or sentence;
  - (v) Right to receive all court documents necessary for preferring an appeal or revision or review of sentence or conviction;
  - (vi) Right to effective presentation of individual complaints and grievances during confinement in prison to the appropriate authorities;
  - (vii) Right to communicate with the prison administration, appropriate Government and judicial authorities, as the case may be, for redressal of violation of any or all of prisoners' rights and for redressal of grievances.
- (E) Right against Arbitrary Prison Punishment Right to entitlement in case of disciplinary violation
- (i) To have precise information as to the nature of violation of Prisons Act and Rules,
  - (ii) To be heard in defence,
  - (iii) To communicate of the decision of disciplinary proceedings, and (iv) to appeal as provided in rules made under the Act.
- (F) Right to Meaningful and Gainful Employment
- (i) Right to meaningful and gainful employment
    - Note 1: No prisoner shall be required to perform 'begar' and other similar forms of forced labour which is prohibited as a fundamental right against exploitation under Article 23 of the Constitution.
    - Note 2: Undertrial prisoners volunteering to do work may be given suitable work wherever practicable. Such prisoners should be paid wages as per rules.
    - Note 3: No prisoner shall be put to domestic work with any official in the prison administration. Such work shall not be considered as meaningful or gainful, even if some monetary compensation is offered.
    - Note 4: Prisoners shall, in no case, be put to any work which is under the management, control, supervision or direction of any private entrepreneur working for profit of his organisation. This will not apply to open prisons and camps.
  - (ii) Right to get wages for the work done in prison.

(G) Right to be released on the due date

Prison and its administration is dealt by different States and UTs as this topic falls in the State List according to the Seventh Schedule of Indian Constitution<sup>7</sup>.

Different States and UTs have different tiers of prison establishments, these include-

- Central Jail

- District Jail
- Sub Jails/women Jails
- Borstal Schools
- Open Jails
- Special Jails

All these prison establishments have to adhere to follow guidelines and rules laid down pertaining to the pregnant women prisoners.

“Prison” being a “State” subject, it is for the respective State Governments to make use of the guidance provided in the Model Prisons and Correctional Services Act, 2023 and enact a suitable legislation on Prisons in their jurisdictions for bringing improvement in prison management and administration of prisoners.

In accordance with Section 27 of the Prisoners Act, 1894<sup>8</sup>, female inmates housed in prisons housing both male and female inmates must be housed in separate buildings or sections of the same building so as to prevent the females from seeing, speaking with, or engaging in sexual relations with the male inmates.

The Model Act<sup>9</sup> provides that the appropriate Government may establish such number of exclusive prisons for women prisoners as it may consider necessary. It also provides for making available facilities to meet any specific needs of women inmates.

In 2007, The National Policy on Prison Reforms and Correctional Administration was formulated and included several recommendations and principles pertinent to female inmates.

When it comes to pregnant inmates, the National Model Prison Manual's<sup>10</sup> guidelines must be closely adhered to. This permits the prisoner's temporary release in order to give birth to a child in a hospital outside of it.

For casual offenders, sentence suspension could be taken into consideration. It is also important for a woman to disclose her pregnancy to the court that ordered her custody, so that the court can decide whether to grant bail (if appropriate) or alter the detention order as needed.

To shield the child from societal stigma, the birth certificate of a woman incarcerated must never name the prison on it.

The National Prison Manual 2023<sup>11</sup> states that special diets should be given to women who are pregnant or nursing. Women who are expecting or nursing should get nutrition and health guidance as part of a program that is created by a licensed healthcare professional.

For at least a year following childbirth, postpartum mothers should be permitted to live apart from other people in order to maintain hygienic conditions and protect their child from infection. Moreover, instruments of restraint, punishment by close confinement or disciplinary segregation should never be used on pregnant or lactating women.<sup>12</sup>

The prison authorities should not dissuade prisoners from breastfeeding their children. Treatment and nutrition programs should also address the medical and nutritional needs of recently pregnant inmates whose children are not in jail, as well as the needs of women who have had miscarriages or abortions.

The urine pregnancy test kits for female inmates must be available free of cost within the jail premise whenever needed. To the extent allowed by law, pregnant women must also be given information on and access to abortions while they are detained.

It is also imperative to allow expectant mothers to pursue employment opportunities both during and after their pregnancy, should they so desire. Their work needs to be appropriate for their medical problems.

All prisoners must have an Aadhar card in order to be eligible for government assistance programs, especially mothers and young children.

The Indian government modified the Prison Manual, taking various constructive efforts to secure proper health facilities, based on the results of surveys regarding the health conditions of women prisoners. Since jail officials regularly do medical examinations in accordance with government directives, conditions in Indian prisons are gradually becoming more normal.<sup>13</sup>

When a woman prisoner is found, or suspected, to be pregnant at the time of admission or later, the lady Medical Officer shall report the fact to the Superintendent. Arrangements shall be made at the earliest to get her medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy and the probable date of delivery. After ascertaining all necessary particulars, a detailed report shall be sent to the Inspector General of prisons.<sup>14</sup>

Section 416 of the Code of Criminal Procedure<sup>15</sup> says 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. It adds that if the high court deems it fit, it could even commute the sentence to life imprisonment. The Prison Manual also states that, If the Medical Officer finds a women prisoner sentenced to death to be pregnant, the matter shall at once be brought to the notice of the Inspector General of Prisons who shall seek the order of the Government for commutation of the death sentence or for postponement of execution till she gives birth to the child. The execution shall not be carried out before the orders of Government are received.<sup>16</sup> It also states, When a woman prisoner sentenced to death declares herself to be pregnant, and Medical Officer is unable to certify the truth or otherwise of the statement, immediately, he shall state the interval of time necessary to enable him to satisfy himself on the point. The Superintendent should immediately report the case to the Government and seek orders.<sup>17</sup>

## CONCLUSION

Although motherhood is frequently seen as merely a biological function, it is also stigmatized and met with pity when a mother is arrested. Being a mother in prison frequently entails an overwhelming need to watch over her kids, but from a distance. Pregnancy testing and screening methods at intake are a crucial first step in providing pregnant inmates with both medical and emotional care. If facilities subsequently offer appropriate prenatal and postnatal care, early pregnancy identification may be essential to enhancing perinatal health outcomes. Jails can play a crucial role in assisting incarcerated women in starting to create better lives for themselves and their children when healthcare services include the provision of appropriate nutrition, nutrition counseling, opportunities for bonding after birth, and other services to address

issues like drug addiction. Pregnant inmates' requirements encompass a complicated web of interwoven social, cultural, political, and economic concerns.

If all the legal provisions pertaining to the rights of pregnant incarcerated women are followed and implemented properly, the issues that these women face will be reduced in turn giving them a less traumatic experience. From the standpoint of ecological systems, we need to make adjustments to the way that we treat imprisoned women who are carrying innocent children, as well as to the way that our communities and criminal justice system operate.

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