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Protection of human rights of women with reference to woman prisoners

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Abstract

Nelson Mandela had once said “It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones”. Prison is an institution for the confinement of persons, who have been held in judicial custody by supreme authority of a state or who have been deprived of their liberty following conviction for a crime. A person found guilty of crimes may be required to serve a sentence in prison. Women in our society are not even safe in their own homes and when a woman is arrested for some crime, the case becomes special. The trauma of separation from their kids and other family members they face is worse than the sentence they are given. Kiran Bedi writes about the Tihar Jail in her book “It’s Always Possible”, “Women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self-respect they reached the prison with. It must be considered some sort of miracle that these women managed to cling on to their sanity, despite the overwhelming odds they faced.” As India is a patriarchal society, women have traditionally felt inferior to men. We continue to come across incidents where women are raped by men and abused by her relations. When she retaliates, she is declared an offender and dumped into prison in violation of her basic human rights. Many women belonging to lower economic strata are often dragged into unlawful activities such as drug dealing, theft and prostitution while all they are trying to achieve is but meeting their basic needs.

Keywords: Human rights, women prisoners, UDHR etc.

Introduction

Women constitute almost half of the world society. However they are the weaker and vulnerable section of society. The Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein. Without distinction of any kind, including distinction based on sex. The two international Covenants of 1966 noted that the State parties to the Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, civil, cultural and political rights. All the resolutions, declarations and recommendations adopted by the UN and the specialized agencies are for the promotion of equality of rights of men and women. Inspire of the instruments existing discrimination against women continues to exist. In the present paper an attempt was made by the researcher to focus on women human rights specially women prisoners.

The United Nations (UN) Convention on the Elimination of Discrimination against Women (CEDAW) is the most comprehensive treaty on the rights of women. It condemns any form of discrimination against women and reaffirms the importance of guaranteeing equal political, economic, social, cultural and civil rights to women and men.

International Legal Regime regarding women in Custody United Nations and Custodial Justice

The primary source of authority for the promulgation of human rights standards by the United Nations bodies may be found in the UN Charter itself. One of the principal aims of the organization is stated in the second preambles paragraph of the Charter. “...to reaffirms faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and nations large and small...”

Universal Declaration of Human Rights (UDHR), 1948

The Universal Declaration represents a great step forward taken by the International Community in 1948. Its persuasive moral character derives from the fact that it is agreed to be a statement of generally accepted international norms.

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This outline of human rights objectives is drafted in broad and general terms, and was the source the substantive frame work- for the two other instruments making up the International Bill of Human Rights. Moreover, the Universal Declaration enumerated and defined the fundamental rights proclaimed in the Charter of the United Nations. Of particular importance for the administration of justice are Articles 3, 5,9,10 and 11 of the Universal Declaration. These Articles address, respectively, the rights to life, liberty and security of person, the prohibition of torture and of cruel, inhuman and degrading treatment or punishment, the prohibition of arbitrary arrest, the right to a fair trial; the right to be presumed innocent until proved guilty, and the prohibition of retroactive penal measures. Thus Articles are most directly relevant to law enforcement.

Important provisions of this Declaration are:

1. All human beings are born free and equal in dignity and rights. They are with reason and conscience and should act towards one another in the spirit of brotherhood.
2. Everyone has a right to life, liberty and security of person.
3. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
4. Everyone has a right to recognition everywhere as a person before the law.
5. No one shall be subjected to arbitrary arrest, detention or exile.
6. Everyone is entitled in full equality to a fair and public hearing by independent and impartial trial at which he has the entire guarantee necessary for his defiance.
7. Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he defies. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time penalty be imposed than the one that was applicable penalty be imposed that the one that was applicable at the time the penal offence was committed.

The European Convention on Human Rights, 1950

The European Convention not only gave specific legal content to human rights in an international agreement but also provided for the establishment of machinery for supervision and enforcement. The important provisions of this Convention are:

1. The lawful detention of a person after conviction by a competent court.
2. The lawful arrest or detention of persons for noncompliance with lawful order of court or in order to secure the fulfillment of any obligation prescribed by the law.
3. The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent him from committing an offence or feeling after having done so.
4. The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for bringing him before the competent legal authority.

5. The lawful detention of a person for the prevention of spreading of infectious disease; of persons of unsound mind, alcoholics or drug addicts and vagrants.

Standard Minimum Rules for the Treatment of Prisoners, 1955

The Standard Minimum Rules were adopted by the First United Nations Congress on the prevention of crime and treatment of offender held in Geneva in 1955 and later approved by the Economic and Social Council.

International Covenant on Civil and political Rights, 1966

The content of the rights in other Universal Declaration received further elaboration when, in March 1976, the international Covenant on Civil and political Rights came into force. The Covenant, in Articles 6, 7, 9, 11, 14 and 15, details the right to life: the prohibition of torture; the prohibition of arbitrary arrest or detention; the prohibition of imprisonment for failure to a fair trial; and the prohibition of retroactive criminal measures. With more than 100 State parties, the Covenant is a binding instrument which must be respected by Governments and their institutions, including the police.

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Any one arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgment. Anyone who is deprived of the judicial proceedings, and should occasion arise, for execution of judgment. Anyone who is deprived of his liberty by arrest or detention shall be entitled to have proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The covenant further mandates that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation, under Art.11.

Declaration on Protection from Torture, 1975

On 9th December, 1975 the United Nations by consensus adopted the Declaration on Protection from Torture, 1975. The important provisions of this Declaration are:

1. Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration on Human Rights.
2. No state may permit or tolerate or torture or other cruel, inhuman, degrading treatment or punishment. Exceptional, circumstances such as a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification

for torture or other cruel inhuman or degrading treatment or punishment.

Declaration of Medical Ethics for protection of prisoners and Detainees against Torture, 1982. Convention against Torture, 1984

The Convention against Torture and other cruel, inhuman or degrading treatment or punishment entered into force in June 1984. The Convention goes considerably further than international Covenant on Civil and Political Rights in protecting person's against international crime and torture. Under the Convention, State parties are obliged to take effective legislative, administrative or other measures to prevent acts of torture: to commit to the principle of non-refoulement when there are grounds to suspect that a returned person would be tortured; to guarantee victims of torture a right to complain and to have their case promptly and impartially examined by competent authorities; to protect complainants and witnesses; to exclude evidence or statements obtained through torture; and to compensate victims and their dependants.

Standard Minimum Rules for Non- Custodial Measures, 1990

In December 1990, the General Assembly adopted the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) in order to encourage the provision by States increase community involvement in the management of criminal justice and serve the cause of justice, while reducing the use of extreme penalty.

Special rules in favor of women

The special status of women is acknowledged and protected by two types of provisions, "one requiring women detainees to be accommodated separately from men, and the other on the question of discrimination."

Women and discrimination

The principle of non-discrimination is fundamental to protect the right and special of women. Discrimination in the enjoyment of human rights is prohibited under the principal human rights instruments.

Rights of women Prisoners under Constitutional Law

In 1948, a movement was started in the United Nations Organization in the form of the Universal Declaration of human Rights to provide certain basic principles in the process of administration of justice. Some of the principles embodied in the Declaration are the equality of treatment, right to life, liberty and security of persons, freedom from torture, cruel, inhuman or degrading treatment or punishment.

The Indian Constitution which drafted more or less at the same time has responded to the international opinion and incorporated to the above provisions. The human rights were equally applicable not only to citizens who are free but also to those who are under legal scrutiny, namely the accused. The accused is protected both constitutionally and procedurally under the Indian laws. The common law maxim, "A man is presumed innocent until he is proved guilty" is considered as a sacrosanct by the framers of the constitution. It is in this background that the constitution provisions extended to the accused in India are examined

part-iii of the constitution in corporate certain fundamental rights which are available to the accused.

Right to Equality

The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The rule that like should be treated alike and the concept of reasonable classification as contained in Art.14 has category of prisoners and their basis of classification into different categories.

Right to Freedom

Art.19 guarantees six freedoms to the citizens of India. Among these, certain freedoms to reside and to settle anywhere in India' and 'freedom to profession, occupation, trade or businesses cannot be enjoyed by the prisoners because of the very nature of these freedoms and due to the conditions of incarceration. But the other freedoms like 'freedom of speech and expression', freedom to join an association'. Etc., can be enjoyed by the prisoners, consistently with the limitation of the incarceration.

There are some latest CASELAWS to show as an example for the protection of human rights of women.

1. States Have Obligation to Prevent and Address Gender-Based Stereotyping

Vertido v The Philippines, UN Doc CEDAW/C/46/D/18/2008 (1 September 2010)

The Committee on the Elimination of Discrimination against Women has held the Philippines in violation of its obligations under the Optional Protocol to the *Convention on the Elimination of All Forms of Discrimination against Women* to protect against gender-based stereotypes after a judgment issued in a rape case. The Committee found the State party did not uphold its obligation to ensure an expeditious remedy or to prevent unfair gender-based stereotypes in violation of arts 2 (c), (f) and 5 (a) of the *Convention*.

2. Temporary Exceptions and the Right to Equality and Non-Discrimination: Exemptions should be Subject to Ongoing Monitoring and Evaluation

Wesley College (Anti-Discrimination Exemption) [2010] VCAT 247 (3 March 2010)

In this case, VCAT considered an exemption application pursuant to s 83 of the *Equal Opportunity Act 1995* by Wesley College. The exemption sought to enable Wesley to advertise for and give preference to prospective female students so as to promote a gender balance among students at the school.

3. Centrale des syndicats du Québec v. Québec (Attorney General), 2018 SCC 18

Québec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux, 2018 SCC 17

In two recent decisions, the Supreme Court of Canada considered the whether several provisions of Québec province's gender pay equity legislation, the *Pay Equity Act 1996*, were contrary to section 15 of the *Canadian Charter of Rights and Freedoms* (addressing systemic wage discrimination against women).

4. Kofoworola Adeolu David v Zara Hosany [2017] EWHC 2787(QB)

In a high-profile decision of the High Court (Queen's Bench Division), Judge Moloney QC dismissed a libel action brought by Mr David, a Governor of a UK public authority, against another Governor, Ms Hosany. The allegedly defamatory material included allegations of sexual harassment.

The Court upheld the principle that complaints, properly made and without malice, are protected from defamation actions (the common law defence of qualified privilege). The exception to the privilege borne from article 8 of the European Convention of Human Rights (ECHR) and section 6 (1) of the *Human Rights Act 1998*, being a person's right to respect for "private and family life, home and correspondence", did not apply as the complaints were made in a private capacity. The judgment provides necessary encouragement to people to report incidences of sexual harassment in the workplace.

5. Exclusion of pregnant students from schools undermines fundamental rights *Head of Department, Department of Education, Free State Province Welkom High School and Another Case (CCT 103/12) [2013] ZACC 25 (10 July 2013)*

The Constitutional Court of South Africa has ruled that school pregnancy policies that allow the automatic exclusion of pregnant students, violate students' constitutional rights to equality and a basic education and were not in the best interests of the students. The Court ordered that the policies be reviewed treatment of young rape survivor violated ICCPR

6. L.N.P. v Argentine Republic, Comm. No. 1610/2007, UN Doc. CCPR/C/102/D/1610/2007 (2011)

The Human Rights Committee found that Argentina's treatment of a 15 year-old rape survivor violated articles 2(3), 3, 7, 14(1), 17, 24 and 26 of the International Covenant on Civil and Political Rights.

Conclusion

Pandit Jawaharlal Nehru once said "You can tell the condition of a nation by looking at the status of women in the country." Even though there are laws for the protection of women, the question which comes to mind is whether the country has fulfilled the dreamers of the Constitution. In every stage of life, women have faced discrimination. Owing to our patriarchal society, women have traditionally been kept on a lower footing and when society declares a woman as an offender who is convicted and given punishment, her position becomes unimaginable. The problems which women prisoners face are endless with many of their problems remaining unresolved. Police and jail authorities have wide discretion in their hands and this results in violation of their basic human rights. Violation of rights of women prisoners continues increasing despite a plethora of provisions contained in the Indian Constitution and International Conventions. India has taken up prison reforms from time to time but the benefit in terms of restorative justice principles and its programmes have rarely reached women prisoners.

As India is a patriarchal society, women have traditionally felt inferior to men. We continue to come across incidents where women are raped by men and abused by her relations.

When she retaliates, she is declared an offender and dumped into prison in violation of her basic human rights. Many women belonging to lower economic strata are often dragged into unlawful activities such as drug dealing, theft and prostitution while all they are trying to achieve is but meeting their basic needs.

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