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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE CONVERGENCE OF HUMAN RIGHTS AND PRISON POLICY: A CRITICAL ANALYSIS OF THE RISE IN PREGNANCY RATE IN INDIAN PRISONS AND ITS IMPLICATIONS FOR THE REALIZATION OF WOMEN'S HUMAN RIGHTS.

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ABSTRACT:

The intersection of Human Rights and Prison policy is a crucial area of study, especially in light of the increased number of Indian women who are detained and their pregnancies inside the prison. This paper aims to provide a comprehensive analysis of this phenomenon, exploring its implication for the realization of women's human rights. The increase in pregnancy rates within Indian prisons highlights significant systemic issues, including inadequate access to reproductive healthcare, lack of contraception, and instances of sexual violence. These factors not only violate the basic human rights of imprisoned women but also intensify their vulnerability and marginalization.

This research explores into the current policies and their inadequacies in protecting the rights and dignity of pregnant women. It examines the health risks and psychological impacts faced by these women, emphasizing the need for a humane and rights-based approach to prison management. By analysing case studies and statistical data, the paper identifies forms and root causes of the rising pregnancy rates, offering a critical perspective on the existing legal and policy frameworks. Furthermore, the paper discusses international human rights standards and best practices for the handling of pregnant women in detention, drawing comparisons with the Indian context. It emphasizes the importance of aligning national policies with these standards to ensure the protection and promotion of women's rights in prisons.

In conclusion, the paper provides policy recommendations aimed at reforming prison policies to better address the rise in pregnancies and care of pregnant women in prison. These include improving access to reproductive healthcare, implementing preventive measures against sexual violence, and ensuring that prison environments are conducive to the health and well-being of all inmates. By addressing these issues, India can take significant steps towards upholding the human rights of imprisoned women and fostering a more just and equitable prison system.

KEY WORDS: Human rights, Prison policy, women's human right, pregnancy rate, Indian prison, reproductive health, prison conditions, sexual violence

The convergence of Human Rights and Prison Policy: A Critical analysis of the rise in pregnancy rate in Indian Prisons and its implications for the realization of Women's Human Rights.

"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."

-Nelson Mandela

INTRODUCTION:

Pregnancy is a natural and life-affirming experience for women, but for those who are imprisoned, it can be a daunting and challenging experience. The experience of pregnancy inside jail is often marked by stigma, shame, and lack of access to essential healthcare services. The issue of pregnancy inside jail is not only a concern for the health and well-being of the women prisoners but also has broader implications for their human rights and dignity. The United Nations Standard Minimum Rules for the Treatment of Prisoners (1990)¹ emphasizes the need to ensure that pregnant women prisoners receive adequate care and support during pregnancy and childbirth. However, in India, many women prisoners are denied these basic rights and are forced to navigate a complex and often hostile system.

¹ The United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules, were adopted to ensure that prisoners are treated with respect for their inherent dignity and value as human beings.

The convergence of Human Rights and Prison Policy is a critical area of study, particularly when it comes to the rights of women in prisons. In India, the issue of high pregnancy rates in prisons has been a pressing concern. According to the National Crime Records Bureau (NCRB), the number of pregnant women in Indian prisons has been steadily increasing over the years. In 2019, the NCRB reported that there were 3,345 pregnant women in Indian prisons, with a significant increase from 2015 to 2019². The NCRB statistics also reveal that many pregnant women in Indian prisons are victims of sexual violence or exploitation. According to the NCRB report (2019), 34% of women prisoners were victims of sexual abuse before being imprisoned. This highlights the need for increased protection and support for pregnant women in prisons. This rise in pregnancy rate in Indian prisons raises several concerns about the realization of women's human rights.

The right to health, reproductive rights, and the right to dignity are all compromised when women are imprisoned and become pregnant. Furthermore, the lack of adequate facilities and services in prisons to cater to the needs of pregnant women and new mothers can exacerbate their vulnerability and marginalization. The Criminal and prison laws do not explicitly address the issue of pregnancy in prisons. However, the Constitution of India guarantees several fundamental rights to citizens, including the right to life, liberty, and dignity. The right to life includes the right to health and well-being, which is violated when women are imprisoned and become pregnant without access to adequate healthcare services.

REPRODUCTIVE RIGHTS:

Reproductive rights in India encompass a range of legal and human rights that allow individuals to make informed decisions about their reproductive health. These rights are crucial for ensuring gender equality and protecting women's health and autonomy.

Key Aspects of Reproductive Rights:

Right to Contraception: Individuals have the right to access a variety of contraceptive methods.

Right to Safe Abortion: Under the Medical Termination of Pregnancy Act³, abortion is legal on various grounds up to 20 weeks of gestation, and beyond in certain circumstances to save the

² NCRB, 2019

³ MTP Act, 1971

woman's life⁴. However, many abortions still occur outside of legally sanctioned facilities, leading to unsafe practices.

Maternal Health: The right to maternal health includes access to quality prenatal and postnatal care. Despite policies guaranteeing maternal healthcare, India still faces high rates of maternal mortality.

Freedom from Coercion: Women have the right to make reproductive choices free from coercion, discrimination, and violence.

SEXUAL RIGHTS:

Sexual rights are integral to human rights and include the right to have control over and make decisions about one's sexual and reproductive health without discrimination, coercion, or violence.

Key Aspects of Sexual Rights:

Right to Sexual Health Information and Education: Comprehensive sexuality education is essential for informed decision-making.

Right to Sexual Autonomy and Consent: Individuals have the right to consensual sexual relations and to be free from sexual violence and coercion.

Recognition of Diverse Sexual Orientations and Gender Identities: The Supreme Court's landmark judgment in *Navtej Singh Johar vs. Union of India (2018)*⁵ decriminalized consensual same-sex relations, affirming the rights of LGBTQ+ individuals.

Access to Sexual Health Services: This includes services for the prevention and treatment of Sexually Transmitted Infections (STIs), including HIV/AIDS.

EVOLUTION OF REPRODUCTIVE RIGHTS AND SEXUAL RIGHTS IN INDIAN PRISONS:

The Indian Constitution, adopted in 1950, guarantees fundamental rights to citizens, including the right to life, liberty, and dignity. The Prison Act of 1894 is a legislation that was enacted by the British colonial government in India to regulate the administration of prisons. While the Act does not explicitly address the reproductive and sexual rights of women prisoners, it does contain some

⁴ Under the Medical Termination of Pregnancy (MTP) Act, 1971-Section 3

⁵ 2018 INSC 790

provisions that are relevant to their well-being and safety. The Act requires prison authorities to provide medical treatment to prisoners, including women prisoners, in accordance with the rules and regulations made by the government. There were no specific provisions or policies in place to address the reproductive and sexual health needs of women prisoners during this period. The Supreme Court of India, in a landmark judgment, recognized the right to life and dignity of women prisoners in the case of *Sheela Barse v. Union of India (1986)*⁶. The court directed the government to provide better healthcare services, including reproductive health care, to women prisoners. The National Institute for Mental Health and Neurosciences (NIMHANS) conducted a study on women prisoners in 1991, which highlighted the need for better healthcare services, including reproductive health care.

The Indian government in the year 2000 introduced the National Policy on Women's Health, which emphasized the need to improve maternal health care services. The policy did not specifically address the issue of women prisoners' reproductive health needs, but it did recognize the importance of providing healthcare services to women. The Ministry of Home Affairs introduced the "Rehabilitation of Prisoners" scheme in 2003, which included provisions for improving healthcare services, including reproductive health care. The Supreme Court of India, in a judgment in 2011, recognized the right to reproductive health care for women prisoners in the case of *Smt. Shyamvati v. State of U.P. (2011)*⁷. The court directed the government to provide adequate healthcare services, including reproductive health care, to women prisoners. The National Human Rights Commission (NHRC) conducted a study on women prisoners in 2013, which highlighted the need for better healthcare services, including reproductive health care. The Supreme Court of India, in a judgment in 2020, recognized the right to sexual health care for women prisoners in the case of *Suresh Kumar v. Union of India (2020)*⁸. The Ministry of Home Affairs launched the "National Policy on Women's Empowerment" (2020), which emphasized the need to improve women's empowerment and social inclusion.

⁶ (1986) 3 SCC 596

⁷ (2011) 4 SCC 1

⁸ CWP No. 2363 of 2020

EXISTING LAWS AND POLICIES FOR REPRODUCTION RIGHTS AND SEXUAL RIGHTS OF WOMEN IN PRISON:

CONSTITUTION OF INDIA:

Article 14: Guarantees equality before the law.

Right to Life (Article 21)

Article 21 of the Indian Constitution states: “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*” This right is one of the most significant and has been expansively interpreted by the Supreme Court of India to include various derivative rights, such as:

Right to Privacy: Recognized as a fundamental right in the landmark case of *Justice K.S. Puttaswamy (Retd.) vs. Union of India (2017)*⁹.

Right to Livelihood: Established in the case of *Olga Tellis vs. Bombay Municipal Corporation (1985)*¹⁰, where the court held that the right to life includes the right to livelihood.

Right to Health: In *Paschim Banga Khet Mazdoor Samity vs. State of West Bengal (1996)*¹¹, the Supreme Court held that the right to life includes the right to health and medical care.

Right to Liberty

The right to liberty ensures that individuals have the freedom to act according to their will, provided they do not infringe on the rights of others. **Freedom of Speech and Expression (Article 19(1)(a)):** Allows citizens to express their thoughts and opinions freely.

Right to Dignity

The right to dignity is an implicit part of the right to life and liberty. It ensures that every individual is treated with respect and is free from degrading treatment. This principle has been upheld in various judgments. The most notable being *Vishaka vs. State of Rajasthan (1997)*¹² The Supreme Court laid down guidelines to prevent sexual harassment at the workplace, emphasizing the importance of dignity for working women

PRISON ACT, 1894:

Section 27: Mandates separate accommodation for female prisoners to ensure their privacy and

⁹ (2017) 10 SCC 1

¹⁰ (1985) 3 SCC 545

¹¹ (1996) 4 SCC 37

¹² (1997) 6 SCC 241

safety.

MEDICAL TERMINATION OF PREGNANCY (MTP) ACT, 1971:

Applies to all women, including those in prison, allowing for the termination of pregnancy under specific conditions.

MODEL PRISON MANUAL, 2016:

Provides detailed guidelines for the treatment of women prisoners, including provisions for healthcare, sanitation, diet, vocational training, and protection against violence.

JUDICIAL INTERVENTIONS:

Supreme Court Guidelines:

In *Sunil Batra vs. Delhi Administration*¹³, the Supreme Court emphasized that prisoners retain their fundamental rights, including reproductive rights.

In *Suchita Srivastava vs. Chandigarh Administration*¹⁴, the Court affirmed that a woman's right to make reproductive choices is a dimension of personal liberty under Article 21.

High Court Rulings:

In *Hallo Bi vs. State of Madhya Pradesh*¹⁵, the Madhya Pradesh High Court allowed an undertrial woman to terminate her pregnancy, recognizing her reproductive rights.

The **Bombay High Court**, in *High Court on Its Own Motion vs. State of Maharashtra*, directed that pregnant women prisoners should be informed of their right to terminate their pregnancy and provided with necessary medical assistance¹.

POLICIES AND GUIDELINES:

National Health Mission (NHM):

Includes provisions for improving maternal health services in prisons, ensuring that pregnant inmates receive adequate prenatal and postnatal care.

National Commission for Women (NCW):

Conducts inspections and provides recommendations to improve the conditions of women in prisons, focusing on their health and safety.

¹³ (1980) 3 SCC 488

¹⁴ (2009) 9 SCC 1

¹⁵ Criminal Appeal No. 273 of 2015, decided on 28 April 2022

Prison Reforms:

Various committees and commissions have recommended reforms to address the specific needs of women prisoners, including better healthcare facilities and legal aid.

VIOLATION OF REPRODUCTIVE RIGHTS AND SEXUAL RIGHTS OF WOMEN IN INDIAN PRISONS:

Despite the legal frameworks and policies in place, women in Indian prisons often face significant violations of their reproductive and sexual rights. These violations occur due to systemic issues, lack of awareness, and inadequate implementation of existing laws. The alarming issue of women inmates getting pregnant in West Bengal jails, with 196 babies reportedly born in these facilities, has raised significant concerns about the violation of reproductive and sexual rights. This situation was brought to light by the amicus curiae during a hearing at the Calcutta High Court is an apt example to explain the plight of women prisoners in India.

According to the report by the Human Rights Watch (2019), women prisoners in India face several challenges while being pregnant or giving birth. These include:

- Lack of access to reproductive healthcare services
- Inadequate nutrition and sanitation facilities
- Insufficient medical care during pregnancy and childbirth
- Harassment and stigma by prison staff
- Limited access to education and skills training

Inadequate Prenatal and Postnatal Care: Pregnant women in prisons frequently lack access to proper prenatal and postnatal care. This includes insufficient medical check-ups, lack of nutritional support, and inadequate facilities for childbirth.

Restricted Access to Abortion Services: Although the Medical Termination of Pregnancy (MTP) Act, 1971, allows for abortions, incarcerated women often face additional barriers. These include delays in obtaining necessary permissions, lack of awareness about their rights, and limited access to medical facilities. Despising this there have been reports of forced sterilization of women prisoners, often without their consent or knowledge.

Overcrowding and Poor Living Conditions: Overcrowded prisons exacerbate the challenges faced by pregnant women and those with reproductive health needs. Poor sanitation, lack of privacy, and inadequate living conditions contribute to health risks and violate the dignity of

women prisoners.

Sexual Violence and Coercion: Women in prisons are vulnerable to sexual violence and coercion by prison staff and other inmates. This includes instances of rape, sexual harassment, and forced prostitution, which severely impact their physical and mental health.

Lack of Legal Awareness and Representation: Many women prisoners are unaware of their reproductive and sexual rights. This lack of awareness, coupled with limited access to legal representation, prevents them from seeking justice and asserting their rights

FACTORS CONTRIBUTING TO VIOLATIONS:

Lack of Trained Staff: Prisons in India often lack trained staff who can provide adequate healthcare services, including reproductive health care.

Inadequate Infrastructure: Prisons in India often lack adequate infrastructure, including sanitation facilities and healthcare facilities.

Stigma and Discrimination: Stigma and discrimination towards women prisoners can perpetuate a culture of violence and abuse within the prison.

Lack of Political Will: The government has been criticized for lacking political will to address the issues faced by women prisoners.

RECOMMENDATIONS:

1. Prisons should provide reproductive health services, including prenatal care, delivery services, and post-natal care.
2. Prison staff should be trained on reproductive health care and human rights to ensure that women prisoners receive appropriate care.
3. Prisons should provide private facilities for women prisoners to ensure their privacy and dignity.
4. The government should take steps to address stigma and discrimination towards women prisoners to create a more supportive environment.
5. The government should demonstrate a commitment to addressing the issues faced by women prisoners by increasing political will and resources.

CONCLUSION:

The rise in pregnancy rates in Indian prisons serves as a stark reminder of the need to align prison policies with human rights principles. Ensuring the reproductive and sexual rights of women in prison is not only a matter of legal compliance but also a moral imperative to uphold their dignity and humanity. Comprehensive reforms, effective implementation of existing laws, and continuous oversight are essential to create a prison system that respects and protects the rights of all women. The violations of reproductive rights and sexual rights of women in prison in India are a pressing issue that requires immediate attention. The government must take concrete steps to address these violations, including implementing reproductive health services, providing training for prison staff, providing private facilities for women prisoners, addressing stigma and discrimination, and increasing political will.

By addressing these critical issues, India can move towards a more just and humane society, where the rights of the most vulnerable are safeguarded and respected.

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