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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

A STUDY ON THE LAWS PERTAINING TO THE RIGHTS OF PREGNANT PRISONERS IN INDIA

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ABSTRACT:

The rights of women in India have been granted only after a long standing struggle and persistent efforts still continue. The rights that are provided to any person should apply to all, irrespective of their societal status. Thus, the rights guaranteed to a woman should be equally provided to all the women throughout the country. In this light, the plight of pregnant prisoners are far worse than the struggles faced by other women prisoners. Since pregnant prisoners constitute only 3 percent of the total women prisoners, their rights face a systemic lack leading to gaps in the provision of their required rights. The contemporary laws relating to prisoners' rights have not been sufficient in providing prenatal and postnatal safeguards to the pregnant prisoners. Since there are no specific laws or rules relating to the rights of the pregnant prisoners, the judiciary has played its active role in safeguarding these rights to the vulnerable group. The rights guaranteed to pregnant prisoners not only ensures their rights but also the rights of the unborn child. This article through a doctrinal study aims to bring out the laws through which the rights of the pregnant prisoners are provided in India. It also tends to provide suggestions for the improvement of the conditions of pregnant women prisoners.

Key Words: Pregnant prisoners, Unborn child, Rights, Prenatal facilities, post natal facilities, Judicial activism.

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INTRODUCTION:

Prisons need to be managed within an ethical framework, guided by International standards developed to protect the Human Rights of prisoners and to ensure that prisoners' treatment aims to facilitate their social reintegration, as a priority.⁴ According to the latest NCRB report,⁵ about 1800 children live with their mothers in various prisons across India. Around 1,800 children live in jails with their mothers, either born there or remaining until the age of six due to a shortage of care outside prisons. India, as a signatory to the UN Child Rights Convention of 1989, is responsible for ensuring children's nutrition, health, education, and entertainment. Women with children make up only 3% of prisons, but they confront harsh conditions, social shame, and maltreatment. Women detainees face more difficulty than men, with psychological stress from separation, lack of family support, and uncertainty exacerbating their jail experience. The antiquated manuals and insensitive approach of the jail authorities add to their woes.⁶

Pregnant women and mothers with dependent children should be imprisoned only when necessary. The State must ensure proper care, and Bangkok Rules mandate maximum opportunities for mothers to spend time with children. Apart from rights lost by incarceration, all inmates have the same human rights as regular people.⁷ As the situation of "Imprisoned Pregnant Women and Imprisoned Mothers" has been discussed at the Congress, a resolution of the 8th UN Congress stated that, "The use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted, and a special effort made to avoid the extended use of imprisonment as a sanction for these categories."⁸ Research from many countries reveal that when fathers are imprisoned, generally the mother continues to care for the children. However, when mothers are imprisoned the family will often break up,⁹ or

⁴ Andrew Coyle, *A Human Rights Approach to Prison Management: A Handbook for Prison Staff* (Int'l Ctr. for Prison Stud. 2002).

⁵ Nat'l Crime Recs. Bureau, Ministry of Home Affairs, *Prison Statistics India 2021* (2022), <https://ncrb.gov.in/en/prison-statistics-india>.

⁶ Comm. on Empowerment of Women (2001-02), 13th Lok Sabha, *Fifth Report on Education, Training and Employment of Women* (Aug. 17, 2001).

⁷ *Charles Sobhraj v. Superintendent, Central Jail, Tihar*, AIR 1978 SC 1514 (India).

⁸ *Resolution 19: Management of Criminal Justice and Development of Sentencing Policies*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Aug. 27–Sept. 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1 (1990).

⁹ Friends World Comm. for Consultation (Quakers), *Submission to the Committee on the Rights of the Child, Day of General Discussion 2005: Children Deprived of Parental Care 2* (Quaker United Nations Office 2009).

as mothers are more often the sole or primary care within a family, alternative care will need to be found, which may include State Welfare Services/Institutions.

ENTITLEMENT TO HEALTH FOR MOTHERS AND BABIES¹⁰

The 19th century saw the emergence of modern prison system, which sought to intellectually and physically transform inmates. A 1919 investigation emphasized the State's obligation to protect inmates' well-being and their right to appropriate care. It revealed how inadequate maternal care, violates the rights of infants born in prison, who live in confined spaces without specialized care even if they are not incarcerated. Decisions on healthcare are still complicated and frequently depend on inmates reporting pregnancy. Although there are roughly 600 pregnant prisoners incarcerated each year in England and Wales, data on this population is still insufficient. Phyllis Ward's case exposed shortcomings in jail healthcare.

The Medical Superintendent of the infirmary, who was briefed by the Committee, pointed out obvious pregnancy symptoms in Phyllis Ward that prison physicians had overlooked. Lucy Baldwin and Rona Epstein's research demonstrates that incarcerating mothers, even for a short time, interferes with family contact and care. The Ministry of Justice's 2018 Female Offender Strategy supported community options while acknowledging the negative effects of short sentences on minors. Prison guards frequently make difficult medical judgments that are outside of their expertise, which puts hospital transfers during childbirth at danger. To lessen this strain, organizations like Birth Companions, support access to labour wards around-the-clock. Despite legal rights to appropriate maternity care, Laura Abbott's research reveals persistent challenges such as delayed care, poor communication, miscarriages, and insufficient support for imprisoned moms.

PROCEDURES FOR A PREGNANT PRISONER DURING INCARCERATION

The Medical Officer is required to notify the Superintendent whenever a female inmate is suspected of being pregnant. Her health, pregnancy condition, length, and due date must all be evaluated at a District Government Hospital. The Inspector General receives a report. As

¹⁰*Maternity Care Reform in English Prisons: A Century of Unanswered Concerns*, Hist. & Pol'y (2020), <https://www.historyandpolicy.org/policy-papers/papers/maternity-care-reform-in-english-prisons-a-century-of-unanswered-concerns>. (last visited Mar 19, 2026)

recommended by a trained medical official, gynaecological examinations and appropriate prenatal and antenatal care must be given.

JUDICIAL INTERVENTION ON THE RIGHTS OF PREGNANT PRISONERS:

The Supreme Court of India and the High Courts, especially after the Sunil Batras case, has expanded rights. Early on, the Court held Article 21 requires a “fair and reasonable” procedure, and not merely any state-prescribed process.”¹¹ Later on in **State of Maharashtra v Prabhakar Pandurang**,¹² Supreme Court of India, held detention doesn’t limit fundamental rights; Article 21 increases the Courts’ responsibility to ensure prison reforms and to dignify prisoner lives as it guarantees dignified life to all, including the prison inmates.¹³ In *D. Bhuvan Mohan Patnaik & Ors. Vs State of Andhra Pradesh & Ors.*, The Honourable Supreme Court declared that “convicts cannot be denied the protection of fundamental rights which they otherwise possess merely because of their conviction”.¹⁴

The dictum by **Justice Krishna Iyer** very emphatically espoused the cause of jail-inmates holding that, “*Prisons are built with ‘Stones of Law’ (sang William Blake) and so, when human rights are hashed behind bars, Constitutional Justice impeaches such law. In this sense, courts which sign citizens into prisons have an onerous duty to ensure that, during detention and subject to the Constitution, freedom from torture belongs to the detenu*”¹⁵

The United States Supreme Court has held, “Prisoner does not shed such basic First Amendment Rights¹⁶ at the prison gate. Rather he retains all the rights of an ordinary citizen except

¹¹ *A.K. Gopalan v. State of Madras*, 1950 S.C.R. 88 (India).

¹² *State of Maharashtra v. Prabhakar Pandurang Sangzgiri*, AIR 1966 SC 424 (India).

¹³ *Jasvir Singh v. State of Punjab*, (2010) C.W.P. No. 5429 (O&M) (India).

¹⁴ *D. Bhuvan Mohan Patnaik v. State of Andhra Pradesh*, (1975) 3 S.C.C. 185 (India).

¹⁵ *Sunil Batra v. Delhi Administration*, (1978) 4 S.C.C. 494 (India) (Sunil Batra I).

¹⁶ U.S. Const. amend. I. [Bill of Rights, First Amendment to the United States Constitution prohibits the making of any law respecting an establishment of religion, ensuring that there is no prohibition on the free exercise of religion, abridging the freedom of speech, infringing on the freedom of the press, interfering with the right to peaceably assemble, or prohibiting the petitioning for a governmental redress of grievances.]

those, expressly or by necessary implication, taken from¹⁷Prisoners retain the essence of human dignity inherent in all persons".¹⁸

In *D.K. Basu vs. State of West Bengal*¹⁹ the Supreme Court laid down several guidelines to ensure procedural rights for the time of arrest and custody. The court while dealing with the complaint of illegal arrest and torture in police custody laid down that Procedural Safeguards must be made available to an accused for protecting his rights under the Constitution.²⁰ Consequently amendments were made in the Criminal Procedure Code, 1860.²¹ In *Arnesh Kumar v. State of Bihar*,²² again the Apex Court has laid down Clear Directions on Actions to be taken against Police officers and Magistrates Arresting and jailing the accused illegally and unnecessarily.²³

MEDICAL TERMINATION OF PREGNANCY DURING INCARCERATION

Medical Termination of Pregnancy Act 1971 applies to all women, including prisoners, but incarcerated women face added barriers to abortion access, prompting legal cases to protect their reproductive rights.

In ***Hallo Bi v. State of Madhya Pradesh***,²⁴ an under trial woman sought abortion in the Madhya Pradesh High Court, alleging forced prostitution. Jail authorities sought approval, but the Chief Judicial Magistrate rejected it, prompting her writ petition. The High Court, in permitting the woman to terminate her pregnancy relied on the Supreme Court's judgment in ***Suchita Srivastava v. Chandigarh Administration***²⁵; reproductive choice is a component of Article 21 personal liberty, according to the High Court. It determined that forced prostitution is equivalent to rape under Section 3 of the Medical Termination of Pregnancy Act of 1971, permitting abortion without the consent of an outside prison or authority.

¹⁷ *Procunier v. Martinez*, 416 U.S. 397 (1974).

¹⁸ *Brown v. Plata*, 563 U.S. 493 (2011) (holding that the "respect for that dignity animates the prohibition against cruel and unusual punishment")

¹⁹ *D.K. Basu v. State of West Bengal*, (1997) 1 S.C.C. 216 (India).

²⁰ *Id* (prescribing guidelines for the duty of police during arrest and the rights of arrestees during investigation).

²¹ The Code of Criminal Procedure (Amendment) Act, 2008, No. 5 of 2009 (India) [Major changes were introduced in section 41, 46, 54 and 161]

²² *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India).

²³ The Code of Criminal Procedure (Amendment) Act, 2008, No. 5 of 2009 (India) [Prosecution proceedings can be initiated, by the High Courts under Section 195, against illegal arrest and detention of officers]

²⁴ *Hallo Bi v. State of Madhya Pradesh*, 2013 Cri. L.J. 2868 (MP) (India).

²⁵ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 S.C.C. 1 (India).

In **High Court on Its Own Motion v. State of Maharashtra**,²⁶ according to the Court, pregnant women, including those who are incarcerated belong to a single group and have a basic right to reproductive choice under Article 21, which includes the ability to end a pregnancy. It mandated that a urine pregnancy test be performed upon entry for all female inmates who are of reproductive age. The Medical Termination of Pregnancy Act of 1971 requires the medical officer to advise pregnant patients of their rights. When a prisoner indicates that she wants to have an abortion, she must be sent right away to a hospital and given complete support. The Court stressed that ending a pregnancy is a "carefully considered" decision rather than a flippant one. Additionally, it was in favour of extending Section 3 Explanation 2 to cover cohabiting couples as well as married couples. The Court upheld that a woman's bodily autonomy comes first and that the freedom to choose whether or not to become a mother stems from her dignity under Article 21.

SPECIAL PROVISIONS FOR PREGNANT WOMEN IN PRISONS

In **R. D. Upadhyay v. State of Andhra Pradesh**,²⁷ the Supreme Court of India published rules for pregnant inmates that address medical treatment, nourishment, childbirth provisions, encouraging bail for delivery outside of prison, and conditions for children in prison.

The Gujarat High Court in **State of Gujarat v. Jadav @ Jatinder Bhagvanbhai Prajapati & Ors.**,²⁸ the Court followed guidelines and granted a pregnant felon eleven months bail to allow for delivery outside of prison and early childcare. It also authorized the jail officials to enable women to keep their children with them until they reached the age limit specified in the Jail Manual.

Right to Procreation and Conjugal Visits

Over the last few years, incarcerated persons have approached courts seeking recognition and enforcement of their conjugal rights. One such case is **Jasvir Singh v. State of Punjab**.²⁹ In a case before the Punjab and Haryana High Court, a couple attempted to assert their conjugal rights while incarcerated, with the husband on death row and the wife serving a life sentence. The Court

²⁶*ABC v. State of Maharashtra*, 2017 Cri. L.J. 218 (Bom) (India).

²⁷*(Re-Inhuman Conditions in 1382 Prisons)*, (2007) 15 S.C.C. 337 (India).

²⁸*State of Gujarat v. Prajapati*, 2007 SCC OnLine Guj 94 (India).

²⁹*Jasvir Singh v. State of Punjab*, 2015 Cri. L.J. 2282 (P&H) (India).

ruled that the right to procreation and conjugal visits is a component of the Article 21 right to live with dignity and survives detention, subject to reasonable restrictions imposed by due process. It asked the Punjab government to organize a Jail Reforms Committee to devise a plan for convicts' conjugal visits.

A *habeas corpus* petition was filed before the Madras High Court by the wife of a life convict seeking leave for her husband for the purpose of fertility treatment. The High Court in **Mrs. Meharaj vs. The State & Ors.**,³⁰ in allowing the application, held that the wife had the right to procreate, and that such right is not extinguished by her spouse being imprisoned for life. It ruled that the wife has a legitimate expectation to have a child that cannot be denied.

Women Prisoners' Right to Pre-natal and Post-natal Care

Before imprisoning pregnant women, authorities must ensure basic delivery facilities and pre- and post-natal care; gynecological exams must be conducted in District hospitals.³¹

PROVISIONS FOR CHILDREN OF WOMEN PRISONERS³²

In 2006, the Court was asked to establish criteria for imprisoned women, such as prenatal and postnatal care, as well as child rights. While the Juvenile Justice (Care and Protection of Children) Act of 2015 prevents children from being housed in adult jails until the age of 21, many innocent youngsters continue to live in prison with their moms. They endure emotional injury, poor living conditions, and developmental setbacks as a result of inadequate parental care, particularly the absence of fathers during critical formative years³³.

The Court ruled in R.D. Upadhyay's case for nutritious food, pre- and postnatal care, jail medical camps, and pediatric care for children to protect prisoners' health rights.

Birth in Prison³⁴

³⁰ *S. Nalini v. State of Tamil Nadu*, 2018 SCC OnLine Mad 278 (India).

³¹ *R.D. Upadhyaya v. State of Andhra Pradesh*, AIR 2006 SC 378 (India).

³² A. Sirajudeen, *Law and Practice of Rights of Prisoners* (Council of Indian Jurisprudence).

³³ Balua & Nanthini, *Children of Incarcerated Parents: An Experimental Study of Life-Skills Intervention on Self-Esteem, Emotional Problems and Resilience*, 12 Turncoat 3822 (2021).

³⁴ Bureau of Police Research and Development, Ministry of Home Affairs, *Model Prison Manual for the Superintendence and Management of Prisons in India* (2003). [provides the following regulations in respect of the children of women prisoners in prison.]

1. Temporary release or parole should be arranged for pregnant prisoners to deliver outside prison, except in high-security cases.
2. Births in prison must be registered without mentioning prison location, only local address.
3. Naming rights for children born to incarcerated women should be ensured wherever possible

Female Prisoners and their Children

1. Female prisoners may keep children with them in jail until age six.
2. After six, children must be handed to a suitable guardian or social welfare institution, preferably nearby to reduce hardship.
3. They remain under protective care until the mother's release or self-sufficiency age.
4. Children in welfare homes must meet mothers weekly, with transport ensured.
5. If a mother dies, the District Magistrate must ensure the child's care through relatives or State Institutions

SUGGESTIONS:

The primary consideration must be the welfare of the child. It is in the best interest of a new born or a young baby to be with his/her mother. Forced separation at birth or in the early months is detrimental to the healthy development of a child, and damages the mother and child relationship. The children of the female prisoners are living with them. Effective environment and facilities must be provided to the children, which will also provide for the bio-psychosocial growth of the child. Young children lack the cognitive capacity to distinguish between acceptable and unacceptable actions. As such, they should face no injustice or unfair treatment. However, the consequences will vary based on the specifics.

1. Many pregnant women enter detention centers. Therefore, before sentencing the woman and sending her to prison, the court should assess the jail's capacities for childbirth and care and should assess the importance of prenatal and postnatal care advantages for mother and child.
2. A Special jail should be established for better treatment of the children and their mothers, as the current prisons are overcrowded, impacting the child's minds

3. The children should get formal and informal education with proper medical care.
4. There are not any recreational facilities for children except Lucknow jail, where Balwadi, crèche and play things are available for children.
5. There is a huge lack of educational facilities available for children inside prison premises. However Lucknow jail, has a preschool facility. Adding to that, the children also attend school out of jail with school uniforms and lunchboxes giving them a sense of normalcy and inclusivity.
6. Although a hospital is available in the Lucknow jail premises, it is still not enough for the children's primary health care. A specialized and regular pediatric visits would ensure the foundational growth of the child.
7. Children get milk, ghee, eggs and seasonal fruits but this distribution is different in every jail. A mandatory and similar nourishment plan for pregnant prisoners and children will also ensure in a better and improved health.

CONCLUSION:

India still faces gaps in providing maternity benefits for women prisoners and needs stronger initiatives such as separate mother and baby care units in prisons, similar to better practices elsewhere. Women inmates experience overcrowding, poor sanitation, inadequate hygiene, weak nutrition, and limited healthcare, along with vulnerabilities related to pregnancy, childcare, education, and violence. A major concern is the separation of children from mothers, causing emotional distress. India has ratified International Conventions, including the Convention on the Elimination of all forms of Discrimination against Women, which requires adequate maternal healthcare, nutrition, and postnatal services. In India, children of unable mothers are placed under Child Welfare Committees.

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