

WOMEN PRISONER'S RIGHTS IN BANGLADESH AND BANGLADESHI RULES AND REGULATIONS: A CRITICAL ANALYSIS OF INTERNATIONAL STANDARDS

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ABSTRACT

Mahatma Gandhi said “hate the sin, love the sinner”. Numerous international instruments also ensure some basic rights of prisoners. For example, it is said that “All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person”ⁱ. This is further said that women prisoners shall not suffer discrimination and shall be sheltered from all forms of forcefulness or abuseⁱⁱ. Like other countries of the world, Bangladesh also has a number of women prisoners. Hence, they need some gender specific requirements. Nevertheless, the author thinks that, Bangladesh is not fully complying with the international instruments. Additionally, there are some scholastic views regarding this. Some academic by their writings also confirmed that, our women prisoners are deprived of some basic rights. In this paper, the author will try to analyze the existing laws of country for protecting women prisoner’s right and its compliance with international standard. Therefore, the author will try to give some suggestion to ensure women prisoner’s right.

Keywords: Evaluation, Women, Women Prisoner, Bangladeshi, Rule and Regulations

1. INTRODUCTION

“And as diseases vary, aids must vary;

A thousand kinds of ill, a thousand cures.”- Jeremy Benthamⁱⁱⁱ

Punishment is the coercion used to enforce the law of the land, which capability it is one of the pillars of contemporary civilization. Providing a nonviolent society and life is the duty of the state. Lack of punishment reasons the law to lose its pressure and at the end creates a society unable to keep regulation and order and authorities unable to shield its people. Nevertheless, the reformative method to control crimes such as reform the convicts but basic human rights are always questionable for them. Psychologists, sociologists, and physiologists suggest that reformative theory can help convicts to be reformed and released back into society as citizens. In this respect, imprisonment is considered as the important method of corrections.

“Women in prison” have turn into the fastest-growing phenomena of around the world^{iv}. Bangladesh has a number of women prisoners. Nevertheless, Women prisoners are considered as the weak group in prison because of their gender. The reasons of this vulnerability are mostly common to different countries around the world. Women prisoners naturally have economically and socially poor backgrounds, and a number of women in low-income countries undergo from a diverse health conditions which may be untreated in the community. This situation is also existed in Bangladesh and has been ignored and unnoticed not only in the scholarly literature of the country but by the policy makers of the country. This is positive that, recently some of the scholars have tried to focus in sociological perspective, but very few scholars are trying to emphasis on legal perspective.

Different research shows that, all over the world women prisoners suffers from diverse types of discriminations^v. This problem also visibly existed in Bangladesh also. Nevertheless, the problem is directly and indirectly unnoticed by different ways. The situation is discounted by not only by scholarly research but also by the Governmental organization and policy makers. The few initiatives have been taken in recent times, but the actions are still insufficient for meeting the actual demand. Still, some discrimination and basic human rights violation has been noticeable. This is notable that, some academic have been try to dig the problem by sociological problem. Legal issues and human rights perspective is not focused properly. This paper will try to point out some legal issues relating to decimation of women prisoner’s basic rights prevailing in Bangladesh. The Research Questions or Hypothesis is, whether Bangladeshi laws relating to women prisoner’s rights are sufficient to protect their basic human rights?

The prime and foremost objective of the study is to make it visible that our existing laws and regulation relating to protect women prisoners rights are sufficient or not? To point out the issues my objectives will be-

- i. To discuss the existing women's prisoners' rights in Bangladesh;
- ii. To discuss the violation of women prisoners rights in Bangladesh;
- iii. To analyze the existing Bangladeshi Rule and Regulations relating to protect the women's prisoners' rights in Bangladesh.
- iv. Finally, this study will try to give some positive suggestions to recover the existing situation.

Scope and Research Gap/ Limitation of the Study:

This paper will only focus on women's prisoners' rights, which are protected by international instruments and domestic laws. The author will not discuss overall prisoner's right.

Additionally, the authors will emphasis only on the legal issues. There is a content gap of the study. All information sources are not easy to access. Finally, there is also suggestion and solution gaps. None of the academics provides any legal solution to resolve the problem.

Every research involves a method by which the desired result can be achieved. In this regard I used both qualitative and quantitative methods. In my research, I will use some survey data to test the hypothesis. As a legal research I will analyze the legislations relating to the Women Prisoner's Rights in Bangladesh and other secondary sources of data. The author thinks that, existing laws are not sufficient for protecting women prisoner's right in Bangladesh properly. That is why the author will try to analyze the laws and find out the loopholes accordingly. In this respect, this research will be a theoretical research.

Research tools

I will use both primary and secondary sources data to establish my research question and problem. To establish my research problem I will use survey data. In this respect, I will also apply some secondary sources of data.

This is a legal research, so, I will certainly use legislation relating to my issue.

To analyses the main idea I will also use books, e journal, articles, newspapers and also from the field directly.

Precisely, in this paper, the author will try to evaluate the existing laws of Bangladesh for protecting women's prisoners' right. In addition, the author will also try to analyze the compliance of international instruments with the domestic legislation regarding women prisoners' right.

2. CONCEPTUALIZATION OF THE STUDY OR JUSTIFICATION OF PUNISHMENT

Before going into the main issue, we need to discuss some primary topic relating to the title.

First of all we need to know "Who is Prisoner?" According to Black Law Dictionary, "a prisoner means a person, who is deprived of his liberty; one who is against his will kept in confinement or custody. A person restrained of his liberty upon any action, civil or criminal, or upon a person or trial for crime."

According to Black's Law Dictionary, "Legal right is a right or privilege that if challenged is supported in court".

According Salmond "A perfect right is one which corresponds to a perfect duty. A perfect duty is one which is not merely recognized by law but which is also enforceable by law".

There are diverse opinions about the justification of the punishment. It is said punishment is "an ever-present challenge to society"^{vi}. There are different theories of punishments such as deterrence, incapacitation, and rehabilitarianism.

- a) **Deterrence:** Maybe the most extensively believed explanation for punishing criminal offenders is the deterrence of future crime^{vii}. By punishing criminal offenders, the state can concurrently achieve two types of deterrence. Firstly, punishing an offender deters the overall population from attractive in criminal act by signifying the harmful consequences of doing so; this is known as common deterrence. Second, punishing an offender incentivizes that offender to himself refrain from upcoming criminal act; this is known as specific deterrence.
- b) **Retribution:** Another usually quoted justification for punishment is retribution the "application of deontological ethics to criminal justice"^{viii}. Retributivism depend on on the basis that criminal offenders should be made to suffer, in the form of criminal punishment, in "payment" for their crimes^{ix}.
- c) **Incapacitation:** Another broadly acknowledged reasoning for criminal punishment is the incapacitation of dangerous offenders. Under this theory, the criminal justice

system should classify and separate daring criminals in order to protect society from future crimes^x.

- d) **Rehabilitation:** Finally the justification for punishment is the rehabilitation of criminal offenders, for those who have committed crimes have departed from suitable societal standards, the main aim of the penal structure might be a tool to get them back in line with social standards^{xi}.

Imprisonment can fall under different theories of punishment, i.e Imprisonment can be deterrence, incapacitation or rehabilitation. It means, imprisonment has justification. Though some authors think that traditional theories have some limitations^{xii}. However, being prisoner does not mean, a prisoner will be deprived of all basic rights. In this respect women prisoners need some gender specific rights.

3. PRESENT SITUATION OF WOMEN PRISONERS IN BANGLADESH

According to Prison Population Statistics, 2017, Bangladesh has total 68 jails. Among 68 jails 13 Central Jails and 55 District Jails^{xiii}. Total numbers of the prisoners are 73,113, among them 54,992 are under trials, 18,185 are convicted, 70,405 are Male prisoners and 2,772 are Female prisoners^{xiv}. Long term prisoners 6,109, amongst them 4,904 are life sentenced and 1,204 are death sentenced. Number of the children under 6 years with mothers 325, among them 155 male and 170 Female^{xv}.

This is also mention worthy, the total land area of the prisons 1,421 acres. The percentages of the occupation of the prison's area are 51.45% in central jail and 48.55% in the district jail^{xvi}.

The survey says, the actual capacity of our jails for the prisoners is 36,614, but actual populations of prisons are of 86,433. This is more than double^{xvii}.

Tahsina Akhter^{xviii}, in her paper stated that, all over the world, women in prison undergo from serious discrimination. She also, mentioned, number of imprisoned women is increasing at a shocking level. Hence, we cannot deny the human rights obligations towards them.

M. Anwarul Aziz Kanak and Mohammad Mizanur Rahman Chowdhury^{xix} in their study found that, our prisons are overcrowded, prisoners are served with low quality of food, and corruption of the jail authority is one of the common scenes of all the jails of Bangladesh. Thus, human rights are violating in our prison in every now and then.

Tahsina Akhter^{xx}, again cited in her study that-

- i. The worst things that a women g through while being in jail is that they are not interested to come out of it. (Ain-O-ShalishKendra, 2000)
- ii. Regular harassment of female prisoners and demanding bribes from prisoners by jail authority are very common practices inside the prisoners in Bangladesh. (Odhikar, 2001)
- iii. The rule that a female detainee will be overseen by female officials is violated. The result is that they are subjected to abuse and maltreatment. (UBINIG, 2006)

So, in a brief, the main problems of the prisons are, overcrowding, lack of health and hygiene facilities, poor living conditions, and so on. In addition, it is clear that, women prisoners are suffering from discriminations and poor standard of living.

4. A REVIEW OF BANGLADESH RULES AND REGULATION REGARDING PROTECTION OF WOMEN'S PRISONERS RIGHT

Before starting the discussion on Bangladeshi legislation regarding protection of women's prisoners' rights. It needs to discuss about international responsibilities provided by international instruments. Bangladesh is committed under the International Covenant on Civil and Political Rights (ICCPR), among others, to treat "all persons deprived of liberty with humanity and with respect for the inherent dignity of the human person," to segregate under trial prisoners from convicts and juveniles from adults and to bring prisoners as speedily as possible to trial^{xxxi}.

The UN Standard Minimum Rules for Treatment of Prisoners obliges states to observe the fundamental principles of security of life, health and personal integrity, non-discrimination in the treatment of prisoners, and to create conditions that allow for prisoners to adjust and integrate into normal community life^{xxii}. Additionally, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders known as the Bangkok Rules set some special provision for women prisoner. The rule provides some guidelines for the treatment of prisoners, in particular the Standard Minimum Rules for the Treatment of Prisoners, the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners^{xxiii}.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders set some basic principles for female prisoners:

1. **Regarding newly arrived prisoners:** Freshly arrived women detainees shall be provided with services to communicate their families; access to legal facilities; information about prison rules and regulations, with their convenient language^{xxiv}.
2. **Women with Children^{xxv}:** Previous to or on admission, women with caretaking responsibilities for kids shall be allowed to prepare for those children. Additionally, the number and individual particulars of the kids of a woman being admitted to prison shall be noted at the time of admission. The records shall include, without influencing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status. The rules, further said, the information connecting to the children's individuality shall be reserved confidential, and the use of such information shall always fulfill with the prerequisite to take into account the greatest benefits of the children.
3. **Allocation^{xxvi}:** Females convicts shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation.
4. **Individual Cleanliness:** The space of women prisoners shall have conveniences and supplies essential to meet women's specific hygiene requirements, including sanitary napkins provided free of charge. In addition, the rules said about supply of pure water for to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.

5. **Health Care Services**

The Resolution says many things about women prisoner's health care.

- i. Relating to Medical screening: A comprehensive medical screening is essential on entry level for every women prisoner^{xxvii}. The screening is important for

- diagnosis of blood borne diseases, other congenital diseases, existence of sexual abuse and other form of violence^{xxviii}.
- ii. Gender-specific health care: If any prisoner requires a female Doctor or Nurse for her gender specific diseases, the authority should meet her demand^{xxix}. It also says that, during examination, only medical staff shall be present there and no one else^{xxx}.
 - iii. Mental Health care: Mental health is also important for gender specific trauma for women prisoner^{xxxi}.
 - iv. HIV prevention, treatment and support: HIV related service and program should be responsive to the women prisoners if required.
 - v. Substance abuse treatment programs
 - vi. Suicide and self-harm prevention
 - vii. Preventive health care services
6. **Safety and security:** Effective actions shall be taken to confirm that women prisoners' self-esteem and respect are secured throughout personal examinations, which shall only be carried out by female staff who have been appropriately trained in appropriate searching procedures and in accordance with established procedures.
7. **Contact to the Outside World:** The authority should introduce and encourage the provisions for communicating women prisoners with their relatives, including their kids, their children's guardians and legal representatives by all rational means^{xxxii}.
8. Institutional personnel and training
 9. Pregnant women, breastfeeding mothers and mothers with children in prison

The Constitution of the People's Republic of Bangladesh:

The constitution of Bangladesh is ensuring "equality before law" and "equal protection of law^{xxxiii}". It says, "All citizens are equal before law and are entitled to equal protection of law^{xxxiv}".

This is why, women prisoners rights are equally important as a general women. Women prisoners are also human being; hence they also have some basic human rights and constitutional rights as well.

Bangladesh has a Jail code. The Code comprises of , Prisons Act 1894, Prisoners Act 1900, Identification of Prisoners Act 1920, Rules made under Section 59 of the Prisons Act 1894 and Rules made under Section 60(a) of the said Act of 1894 for the superintendence and management of jails and subsidiary jails respectively. These Acts provides a number of the rights for the prisoners, some rights are specifically focused on the female prisoners.

The Prisons Act 1894

The term is clearly defined in this Act. Here "prison" means any jail or place used perpetually or for the time being under the general or special orders of Government for the confinement of prisoners, and includes all lands and buildings appurtenant thereto, but does not include– any place for the confinement of prisoners who are exclusively in the custody of the police; any place specially appointed by the Government under section 541 of the Code of Criminal Procedure, 1898]; or any place which has been declared by the Government, by general or special order, to be a subsidiary jail:

Separation of prisons

The Act also provides the provisions for separation of prisons. The Act says, the females shall be captive in distinct buildings, or separate parts of the same building, in such manner as to avoid their nearsighted, or communicating or holding any intercourse with, the male prisoners^{xxxv}.

Flooding and clothing

The Act, says about food, clothing and bedding of civil and unconvinced criminals. This provision is applicable both for male and female prisoners^{xxxvi}.

Health care of the prison

Regarding healthcare the Act pronounces that in case of the illness of the prisoners, the Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoners desirous to see him, or who is ill, or whose state of mind or body appears to require attention^{xxxvii}. In addition, the act says, hospital or proper place should be provided for the prisoners^{xxxviii}.

The Prisoners Act 1900

The concept of Prison

This Act also provides the definition of “prison”. It says prison comprises a place which has been confirmed by the Government, by general or special order, to be a subordinate jail.

Reformatory School

The Act, says about reformatory school in two places^{xxxix}.

Special Provisions for the Lunatic Prisoners

If the Government believes that, a person is lunatic, he may by an order remove a lunatic to a lunatic asylum or other place of safe custody within Bangladesh there to be retained and treated as the Government guides during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned according to law^{xl}.

The Identification of Prisoners Act 1920

The Act provides the special provisions regarding taking photograph of the convicted persons. A magistrate of first class can also pass an order for taking by a police measurements or photograph of any person for the purpose of any investigation of proceeding under the criminal procedure code if the prisoner was previously arrested in connection with such investigation or proceeding. There is likewise provision for devastation of measurements or photo taken of an under trial prisoner after his release or acquittal by the court unless he was formerly sentenced of an offence punishable with rigorous imprisonment for one year or more^{xli}.

5. FINDING AND RECOMMENDATIONS

- i. ***Regarding Individual Cleanliness:*** United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders clearly states some women specific cleanliness provisions. Nevertheless, the Prisons Act 1894 is not fully complying with those guidelines. The Act only says about some general medical care. When prisoners will be sick the authority will treat him/her. In addition, the Rules for the superintendence and Management of Jails in Bangladesh also covered only some general sanitary regulations. The gender specific hygiene is not specified in our legislations.

- ii. **Regarding Health Care Services:** International Instruments also provides some gender specific healthcare services. Women prisoners frequently have larger primary health-care requirements in contrast to men^{xiii}. Their situation may grow into worse in jails due to the lack of satisfactory health care, lack of hygiene, insufficient diet and overcrowding. Additionally, all women have gender-specific health requirements and necessity to have regular access to consultants in women's health care. For example, regular mental health care HIV prevention, care and support, special treatments for pregnant women and so on. However,

The Prisons Act 1894 and the Rules for the superintendence and Management of Jails in Bangladesh provide only general medical care provisions. They will treat a prisoner when a prisoner is sick.

- iii. **Safety and security:** According to the Handbook on Women and Imprisonment women of many countries are sexually abused and chastened by law enforcement officials, even in prisons. Such abuse can range from simple abuse to rape. It includes oral abuse, inappropriate touching during pat-down searches, frequent and unnecessary searching and spying on prisoners^{xliii}.

A number of the print media of Bangladesh has been published several incidents of sexual abuse against women and girls prisoner. From arrest to prison stage women prisoners are suffered numerous sexual abuses. As the incidents are occurred by the member of government authority, most of the incidents have not entertained by the law enforcing agency. For example, August 06, 2019, one of the reputed newspapers in Bangladesh has been published a news that one Office in Charge (OC), including other cops rape a woman^{xliv}. 05 Aug 2019, another news media bdnews24.com published a news that, a woman apparently gang-raped by policemen in Khulna^{xlv}.

Sometimes the authority tries to abuse their power and detain unlawfully. In this respect this is mention worthy here a case named *BLAST v Bangladesh vs. Bangladesh and others* [*'Safe Custody' Case*], *Writ Petition No. 1157 of 1997*^{xli}. In this case the honorable high court division issued a Rule Nisi on 24.02.1997 calling upon the respondents "to show because why the detainee should not be brought before the court so that it may satisfy itself that she is not being detained without lawful authority".

Bangladeshi legislation is almost silent in this respect.

- iv. **Allocation:** United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) says a specific guidelines for women prisoners accommodations. The UN rules says, the accommodation of women prisoners shall have services and supplies necessary to meet women's specific cleanliness needs, including sanitary napkins provided free of cost and other gender specific needs^{xlvii}. However, In Bangladesh a number of the scholastic research confirms that our jails are overcrowded for the prisoners^{xlviii}. A joint project of Ministry of Home Affairs (MoHA) and GIZ on May 2018^{xlix}. The survey says, the actual capacity of our jails for the prisoners is 36,614, but actual populations of prisons are of 86,433. This is more than double.

In accordance with the provision of the Rules for the Superintendence and Management of Jails in Bangladesh¹, in every sleeping ward, superficial and cubical space shall be allowed for each prisoner, as below, according to the conditions specified^{li}:

	Superficial area per prisoner	Cubical space per prisoner
	Square meter	Cubic meter
I wards in which the prisoners sleep in two rows	4.18	16.99
I wards in which the prisoners sleep in four rows	5.65	21.24
In wards in which the prisoners sleep in more than four rows	9.26	35.40

The system is applicable both for male and female prisoners. There is no specific system for women prisoners. Additionally, it seems that the system is only centric in pen and paper. This is why overcrowding is one of the problems in Bangladeshi prisons. Even international body also affirmed this, our prisons are overcrowded^{lii}.

- v. **Special Foods for Pregnant Prisoners:** As per the information of World Health Organization (WHO), on 2015, around 303 000 women died from pregnancy-related causes, 2.7 million infants died during the first 28 days of life^{liii}. The statistics are really shocking. Dr Ian Askew, Director of Reproductive Health and Research, WHO says "Pregnancy should be a positive experience for all women and they should receive care

that respects their dignity^{liv}." In this respect, even pregnant prisoners need special diet. However, the Rules for the Superintendence and Management of Jails in Bangladesh stated a diet for all prisoners. The rule doesn't specify special foods for pregnant prisoners.

This is how, Bangladeshi legislations are not fully positive for the Women prisoners. However, on 2006 Bangladesh government has passed a special law titled Special Facilities for Women Prisoners Act, 2006. The Act provides some special facilities for women prisoners, i.e. Prisoners can be bailed with condition, prisoners will be taught with some handy craft, prison authority will give special training to the prisoners and they will be given after care and so on. Nonetheless, some prisoners will not eligible to get these special benefits. For example, The prisoner with death sentence, life imprisoned, convicted for conspiracy against state and convicted under explosive and narcotic laws.

It is notable that, even this newest law is also totally apathetic about gender specific women rights.

Bangladesh Legal Aid and Service Trust (BLAST) is one of the largest legal services organizations in Bangladesh. BLAST has some special features as a legal services organization. First, it helps both women and men. Second, it undertakes wide criminal defense related task and has a considerable specialization in labour law, in addition to expertise on family and land law^{lv}. This organization has done some incredible job for prisoners' rights.

In the case of *BLAST & Another v Bangladesh & Others*^{lvi} ensures safeguards on arrest, fair trial, freedom from torture, arrest without warrant, remand in police custody. However, these rights are merely basic prisoners' rights. In every democratic county these rights should be ensured.

In another Case *BLAST & Another v Bangladesh & Others*^{lvii} this judgment pronounced for ensuring safeguards on arrest, fair trial, access to justice, under trial Prisoners. Even in this case some elementary rights are discussed.

Some cases are still pending.

After above discussion, it is clear that, Bangladesh has a number of legislations which are dealing prisoners' rights are not following international standard. Being a prisoner, women prisoners have some gender specific rights. But, they are deprived of those essential rights. We should consider those rights to be inserted into our legislations and make sure to ensure their rights.

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ⁱⁱⁱ Improvement of the Real Situation of Overcrowding in Prisons in Bangladesh (IRSOP) [A joint project of Ministry of Home Affairs (MoHA) and GIZ], May 2018 https://www.blast.org.bd/content/report/irsop/201805_IRSOP_Key%20Statistics_May_2018.pdf

ⁱⁱⁱⁱ WHO, Pregnant women must be able to access the right care at the right time, says WHO, Updated 7 November 2016 <https://www.who.int/news-room/detail/07-11-2016-pregnant-women-must-be-able-to-access-the-right-care-at-the-right-time-says-who>

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^{lvi} BLAST & Another v Bangladesh & Others 55 DLR (2003) 363

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