

“The Irony of the Correctional Experience: Insight to Women’s Prison”

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INTRODUCTION

Women have been regarded as a symbol of spirituality in the Indian society. Women are the creator of a new life as well as the nurturer of a home. Women although constitute a small proportion of the general prisoner population, however their number is continuously increasing. Studies have shown that the number of criminal offences committed by female prisoners is increasing at a rate faster than the male prisoners. Over 3 lakh women were arrested for committing offence under the Indian Penal Code and Special and Local Laws in 2016. The Constitution of India imposes obligation over the State to protect the rights of women and to fulfil the requirements of international conventions regarding the rights of women. In reality, women prisons are not being maintained properly, even their basic human needs have not been taken care of. This failure of imprisonment leads to offensive behaviour of women, which thereby increases the rate of re-offending among women. Many National and International treaties have laid down the guidelines to ensure a safe environment for women in prison but in reality none of these guidelines have been implemented. The prisons are still overcrowded, with no health care services and lack basic facilities for sanitation and hygiene.

Present Day Scenario

Women constitute a small proportion of the prison population worldwide, however there is an increase in the population of women prisoners in the past few years. The population of women prisoners increased by 61% over the past fifteen years which has surpassed the male growth rate. The infrastructure of the prison on the other hand continues to be the same thus making it incapable to cope up with the rising population. It has been noticed that women in the prisons usually belong to economically and socially disadvantaged part of the society. Statistics indicate that of 150 women, 128 are poverty stricken with family income less than Rs 5000. Thus it is their economical vulnerability because of which they continue to be detained as they lack the means to pay for bail. Typically they are young, illiterate and unemployed. Their economic status is a major factor for their detention in the Indian prisons. Recently, as per the National Commission for Women, due to the Covid'19 pandemic, over 1700 women under trials were released on interim bail and parole by seven states to ensure social distancing in jails.

RULES GOVERNING WOMEN IN PRISON

International Policies

- Both, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment prohibit the torture and cruel, inhuman, or degrading treatment, without exception attached or derogation.
- The Standard Minimum Rules adopted by U.N. Economic and Social Council in 1957 are one of the most comprehensive sets of guidelines stating the rights of prisoners. They prescribe that the religious beliefs of the prisoner must be respected, prisoners should be provided with wholesome food at usual timings, also at least one qualified medical officer who also has knowledge of psychiatry should be present at every institution. There are other special provisions for women special accommodation for all pre and post-natal care by qualified individuals. The body of principles for the protection and treatment of all persons under any form of detention, lays down general standards to treat prisoners with inherent dignity and value as human beings.

National Legislations, measures and policies

National rules governing the rights of prisoners in India are determined by following laws;

1. Indian penal code 1860
2. Prisoners act 1900
3. Prison act, 1894
4. Identification of prisoner's act, 1920
5. Exchange of prisoner's act 1948
6. Transfer of prisoner's act 1950
7. Prisoner's attendance in court act, 1955
8. Probation of offenders Act 1958
9. Code of criminal procedure, 1973
10. Repatriation of prisoner's act, 2003
11. Model prisoner manual 2003 and 2016

The adequate implementation of existing provisions will go a long way to improve the prison system. The National Model Prison Manual 2016 is a progressive document outlining the basic entitlements of women in prison and should be adopted by all states followed by its full implementation¹

¹ Women prisons in India by Dr. Kiran Naik 2019 IJRAR June 2019 volume 6 issue 2

Earlier there was no uniformity to be seen in the laws relating to prisons. Therefore, in the year 2016, the ministry of home affairs has advised the state government and UTs administration to revise the existing norms and adopt the provisions of the National Model Prison Manual, 2016.

Some of the guidelines are stated hereby-

- In order to ensure safety of the women there has to be at least one jail of women in each state.
- Enclosures for such prisoners should have all the required facilities in reference to their special needs, such as pregnancy, child birth and family care.
- Female prisoners are to granted equal opportunities of work, vocational training and education as male prisoners.
- A record shall be maintained where the details regarding a women's prisoner's identity, their reason for imprisonment, day and hour of their admission and release and details of children of women prisoners shall be entered.
- No male prisoners shall be allowed to enter the ward of women prisoners unless he holds a legit excuse. Also no male prisoners shall visit the female ward at night except in case of emergency that too along with a female officer.
- All staff working in women prisons shall receive training relating to the gender specific needs and rights of women including sexual misconduct and discrimination.
- Photographs, footprints figure prints, or measurements shall be done in the presence and the assistance of a women prison officer.
- Routine visits and inspection rounds shall be made by women prison officers.
- Women prisoners shall be searched by women wardens and also not in the presence of any male.
- On their admission to prison the medical examination shall be done by a female in-charge.
- When the women prisoner is found to be pregnant at the time of admission or late the medical officer shall inform the superintendent and send for gynaecological examination.
- Arrangement for temporary release will be made to enable a prisoner to deliver her child in hospital outside the prison. Births shall be registered at the local birth register office.
- Children up to six years of age shall be admitted to prison with their mother if no other arrangements can be made. They shall however be given proper education and recreational opportunities.
- Food, adequate clothing, proper accommodation, access to education, cultural programs and vocational training, legal aid services shall be ensured and timely provided.

PROBLEMS FACED BY WOMEN PRISONER

Gender stratification is a big problem in our society. Women have been fighting against discrimination for decades to attain their rights. Women in prisons have become an upcoming issue, which has to be taken into consideration by the government. There are numerous problems faced by women in prisons in our country.

Shortage of Prison Staff

The strength of 49030 prison staff has been sanctioned by the government, however the present staff is 40000. There is a shortage of the prison staff creating a ratio of 1:7 which means that there is one prison staff for 7 prisoners. The lack of female staff in the prison, which ultimately makes the male staff responsible for the female inmates, this is highly undesirable since the inmates need gender specific services.

Overcrowded jail

Jails in India are overcrowded, it weakens every, attempt to humanize living standards behind bars, and the implications are too serious to neglect. One of the principal reason for such overcrowding is the under trial prisoners. Large number of under trial prisoners in Indian Jails are due to delay in police investigation, non furnishing of bail by poor prisoners or due to non appearance of witness in the court. Although National and International Guidelines prescribe decent human living standards for prisoners, they are yet not being implemented.

Lack of Sanitation and Hygiene

There is a lack of basic facilities for sanitation and hygiene. The prescription in the Prison Manual states that there should be one toilet and one bathing cubicle for every ten prisoners, but this has been rarely seen. In addition to this there is a lack of sufficient water as well which exacerbates the low level of sanitation and hygiene.

Lack of Legal Aid

As per the National Prison Manual, State government are to appoint jail visiting advocates, set up legal aid clinics in every prison and provide legal literacy to the prisoners so as to ensure that they have access to proper legal aid. However, it has been observed that various prisons do not have a legal aid cell. In *Suk das V Union Territory of Arunachal Pradesh* it was held by the court that free legal aid at the cost of state is a fundamental right of the

accused and "implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21"²

Poor Healthcare and Welfare

There is a lack of expenditure on healthcare and welfare of the prisoners. In India, an average of Rs.17725.90 per inmate per year was spent by the prison authority in the year 2009, in contrast to the US, where \$22,650 was spend as the average annual operating cost per state. The closed walls, the cramped living space and the ill treatment by the police create anxiety among the prisoners thereby creating mental health issues.

Abuse of Prisoners

The prisoners are often abused by guards. Sometimes the prisoners are also beaten to death by the staff. Brutal assault, solitary confinement, keeping them nude, not providing food and water are some examples of abuse by prisoners.

Death in Jail

Lastly, the death of an inmate is a matter of serious concern for the prison authorities. Although this matter has been taken up by media, Non Governmental Organization's concerned with civil liberties and Human Rights Commission still deaths are being caused in the prisons by suicide, execution, firing, murder by a co-inmate or due to negligence by the jail personnel are a matter of concern.

SUGGESTIVE MEASURE

The evidence is systematic and consistent women's specific needs are often unmet by prison services and by the prison environment. furthermore, there are considerable gaps between prison health and public health services. Politicians and the general public are unaware of these evident and unacceptable inequities. A robust grievance redressal mechanism must be placed in all prisons in order to ensure the rights are not violated and their concerns are heard impartially and given utmost attention. There should be both internal and external mechanisms available for inmates to represent their grievances. In order to improve the existing situation, we require awareness, thought and action at all levels of the policy-making chain- politicians, prison management, health advocates and prison staff. Also The following suggestions must be considered.

Health care services

Women prisoners generally have greater demand than male prisoners. Therefore, proper health services shall be provided before admission and during detention as well. The nutrition

^{2 2} Suk Das V Union Territory of Arunachal Pradesh, (1986) 2 SCC 401

offered in prisons shall be able to meet pregnant women's needs. After giving birth, women in prison shall not be discouraged from breastfeeding. The jail authority shall schedule the same so as to avoid interference with prison routines.

Hygiene and sanitation

Access to regular showers, free provision of hygiene products and sanitary napkins and possibility of regular exercise shall be made mandatory standard services.

Mental health problems

Women prisoners suffer from mental health problems, among which post-traumatic stress disorder, depression and self-harming are the ones which are regularly reported. They suffer from mental health problems to a higher degree than for both male prisoners and the general population, with rates as high as 90%. Evidence reveals that women prisoners are more likely to self-harm and commit suicide than male prisoners. Therefore, there shall be

Education and training

Women in prison are to be educated about the national and international rights available to them and the organizations working to benefit them. So that they can stand up to all sorts of exploitation in jail premises and otherwise as well. They shall also have access to maternal education during pregnancy to help prepare them for the birth. The entitlements shall be explained in the language they understand.

Drug dependency

Prisoners having high dependency on drug usage and alcohol shall be given requisite treatments. The prison authorities shall appoint competent and committed staff, the support of correctional authorities, adequate resources, a comprehensive and intensive course of therapy aimed at affecting the addiction of the prisoners.³

Contact with community

The distance that often exists between women prisoners and their home, exacerbates such problems. They shall conduct counselling sessions along with the families of the prisoners so as to reduce post release stress. A detainee should be entitled to have interviews with the family, friends and lawyers without severe restrictions.⁴

Vocational training

Vocational training and skilling facilities in prison should be also be upgraded as it can improve the daily lives of prisoners and give them economic support after release⁵

³ Drug treatment in state prison by Gregory P. Fallin treating drug problem volume 2

⁴ Francis Coralie Mullin v. the administration, UT of Delhi and ors 1981 AIR 746 SCR (2) 516

⁵ Women prisons in India by Dr. Kiran Naik IJRAR JUNE 2019 VOLUME 6 ISSUE 2

Prevention from sexual assault

Being raped and beaten in prison while awaiting trial or during detention is not the kind of justice that anybody deserves in a democratic country—however heinous the crime committed by the prisoner. Therefore, as long as possible only the women officers shall be allowed inside the women prisoner's wards and strict law implementation shall be ensured in cases of infringement.

Right to be defended – Article 21 of the constitution ensures that no person shall be denied the right to consult legal practitioner of his choice. The remedy for the same is also available under code of criminal procedure under section 304. Legal assistance is guaranteed not only under constitution and code of criminal procedure but also under various international covenants and human right declarations.

ROLE OF NATIONAL COMMISSION FOR WOMEN

The National Commission for women was set up as a statutory body under the National Commission for Women Act, 1990. As per Section 10(10) of the National Commission for Women Act, one of the functions of the National Commission for Women is to inspect or cause to be inspected jails, remand homes, women's institution or any other place of custody where women are kept as prisoners, or otherwise and taken up with concerned authorities for remedial action, if found necessary. The commission has taken various steps to improve the status of women. Taking the Covid'19 pandemic situation under consideration, the commission laid down some points of advisory/recommendation. As per the commission, since the number of under trial prisoners languishing for a long period are very significant so one way to avoid overcrowding is to ensure prompt legal action to get them released on bail. Also for the cases in which the prisoner is accused for non bailable offences leading to a penalty of death or life imprisonment, if found guilty, need to be processed for bail under proviso to the Section 437(1)(ii) of Cr.Pc which provides for special dispensation to women and children below the age of 16 years, in the matter to grant of bail. The healthcare services in the prison should also be augmented and arrange online meetings with family. To ensure that the inmates are healthy, the prisoners should be given mask, hand gloves and sanitizer. Furthermore, the commission requested that the prison authorities should adopt therapeutic approach and treat the women inmate with compassion. National Commission for women had played a major role in decongesting women in prison by releasing 1700 women on interim bail and parole.

CONCLUSION

It can be concluded that separate women prisons are essential to keep the women prisoners. The number of women prisoners are increasing day by day; hence the number of women prisons should also be increased to cope up with the increasing number. Women prisoners have special requirements which should be fulfilled in the prison. It is essential to reduce the number of under trial prisoners, to reduce the burden on jail. Prisons should rather be

correctional home which can help the prisoners to reform and rehabilitate themselves. In the case of a pregnant women prisoner, they can be granted bail and if the women have children who are dependent on her, their mercy application should be considered sympathetically and released accordingly. It has been observed that women prisoners are unaware of their rights and the complexity of judicial system, therefore proper legal aid programmes should be launched. The national model prison manual 2016 provides a progressive approach by stating basic entitlements of women in prison. For it to be effective, it has to whole heartedly adopted by all states and ensure its implementation. The Mulla Committee had recommended that in case a women prison contains 25 or more women then a full time legal medical officer should be appointed while in case of fewer women prisoner's lady medical officer should be appointed on part time basis. The Prison Act 1894 which regulates the prison administration is too old and requires amendment. Since the majority of the women prisoners are amongst the poorest member of the society, thus they may arrive with prior existing physical and mental health problems, therefore there is a need for judiciary as well as the legislature to recognise and address the particular form of violence levied against these women.