

Women Prisoners and their Children Under The Indian Criminal Justice System

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Abstract:

Traditionally most of the prison inmates are male and the prison environment is therefore shaped by the needs of males and do not cater to the special needs of women prisoners. The Prison Act, 1894 contains no provisions regarding the welfare of the women prisoners. Prison in India and their administration is State subject covered by item 4 under the State List in the 7th Scheduled of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State Government and is governed by the Prison Manuals of the respective State governments. Although women still constitute a small minority of prison population but their number is increasing. In addition to the common kinds of distress men and women experience in prison women are more vulnerable for gender discrimination, neglect, violence, physical and sexual abuse. In *R.D.Upadhyaya v. State of Andhra Pradesh and others* (AIR 2006 SC 1946), the Supreme Court suggested that female prisoners be allowed to keep their children until they attain the age of 6 years. No doubt, women are also not free from involvement in crime; the law does not make any provision that women just because they look after a child could be exempted from the operation of laws. Therefore, when a mother is prosecuted, their children may need to stay with them inside jail. When prison in India is facing a lot of drawbacks, the question is what would be the impact on this child? Will the prison environment be good for the upbringing of children when there is no fault of them with regards to the criminal prosecution against his/her mother. They may be the most neglected and forgotten child. Therefore, in this paper the author attempted to explore the status of women prisoners and their children in the context of the Indian criminal justice system.

Keywords: Prison, women prisoner and children, plight, victim.

1.1 INTRODUCTION:

Emile Durkheim in his Division of Social Labour opined that crime is inevitable in every society; there is no society that is not confronted with the problems of criminality and theoretically crime could disappear altogether only when all member of society have the same value and such a standardization of individual is neither possible nor desirable. He opined that some crime is in fact necessary if society is to progress. All most all the States enacted the statutes imposing punishment for the wrong-doers. There may be differences in imposing punishment depending upon the circumstances of that country. Prison in India and their administration is State subject covered by item 4 under the State List in the 7th Scheduled of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State Government and is governed by the Prison Manuals of the respective State

governments. Thus State has the primary role, responsibility and authority to change the current prison laws, rules and regulation. In *R.D.Upadhyaya v. State of Andhra Pradesh and others* (AIR 2006 SC 1946), the Supreme Court suggested that female prisoners be allowed to keep their children until they attain the age of 6 years Women's detention in Jail is mostly closely related due to poverty; they come from economically and socially disadvantage members of the society, they are uneducated; coupled with the responsibilities to look after their children, they often resorted to criminal activities resulting in criminal sanction. Although men and women can be subjected to imprisonment, for women prisoners little consideration has been given to them for their needs. Children of incarcerated parents undergo psychological and emotional trauma, the separation and the absence of their parents leads to host of difficult circumstances. The incarceration of women prisoners affects the aspects of their children's lives, not only bond between mother-children but with the added stigma, this often leads the children to abusive and aggressive behavior. Children came in contact with adult prisoners as well as the prison environment can be detrimental and not conducive for their development.

1.2 MEANING OF PRISON & PRISONERS

There have been prisons and dungeons for thousands of years, but prior to the eighteenth century they were seldom used to incarcerate convicted felons. The word Prison connotes its derivation from the Latin words and means "seize" and "cage"¹. Today we used the term '*prison*' to denote all places of restraint or detention of those either suspected or convicted of offences contrary to law. The Oxford English Dictionary defines Prison as "*A place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial for punishment*".

Section 3 (1) of the Prisoner act 1894 defines prison "Prison means any jail or place used permanently or temporarily under the general or special orders of prisoners and includes all lands and buildings appurtenant thereto, but does not include – (a) Any place for the confinement of prisoners who are exclusively in the custody of police. (b) Any place specially appointed by the State Government under section 417 of the Code of Criminal Procedure, 1973 (Act No 2 of 1974) or (c) Any place which has been declared by the State Government by general or special order to be a subsidiary jail. Section 2(a) of the Prisoners (Attendance in Courts) Act 1955 defines Prison includes –(i) any place which has been declared by the State Government by the general or special order, to be a subsidiary jail and (ii) any reformatory, borstal institution or other institution of a like nature. Prison in India can be broadly classified into Central jail, District jail, Sub-Jail, Women jail, Open jail, Borstal school, Special Jail and Other Jail.

A 'prisoner' is a person who is deprived of his personal liberty due to the conviction of a crime and imprisonment is the most common method of punishment provided by all legal systems. According to Merriam-Webster, a prisoner is "A person deprived of liberty and kept under involuntary restraint, confinement, or custody"². Prisoners are persons who are by legal process committed to Penal institutions. Prisoners include the under-trial prisoners awaiting trial and prisoners who are convicts. There can also be criminal and civil prisoners. Criminal prisoner

¹ Shama Nargis (2019, August). *Prisoners, Their Rights and Reformation* International Journal of Engineering and Management Research <https://doi.org/10.31033/ijemr.9.4.1>

² Prisoner, Merriam-webster's dictionary of law (1st Ed. 2005).

means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial³. Convicted criminal prisoner means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882 (10 of 1882), or under the 2 Prisoners Act, 1871 (5 of 1871)⁴. Civil prisoner means any prisoner who is not a criminal prisoner⁵. The word Prisoners therefore means any person who is confined to jail as a result of criminal proceeding instituted against them which includes person waiting trials (i.e under-trial) and already convicted.

1.3 STATISTICAL VIEW OF PRISONERS IN INDIA

In 1870, Mumbai (then Bombay) opened its first prison for women in India. Initially housing both male and female inmates, it was known as the Byculla Jail. The Mahila Prison, a special prison for female inmates, was however constructed in 1896⁶. Before, 1995 the prison was the subject of National Institute of Social Defense (NISD) and after 1995, it is transferred to the subject of Bureau of Police Research and Development (BPR&D) and now the National Crime Records Bureau is publishing data regarding the subject of prison on the headings of Prison Statistics India under the Ministry of Home Affairs (Women Safety Division)⁷.

Type of jail, number, sanction capacity, number of inmates and occupancy rate as on 31st December, 2021

Sl. No	Type	Number of Jail	Sanction Capacity	Number of inmates	Occupancy rate
1.	Central Jail	148	193536	239311	123.7
1.	District Jail	424	163606	254214	155.4
2.	Sub-Jail	564	45436	46736	102.9
3.	Women Jail	32	6767	3808	56.3
4.	Open Jail	88	5953	2178	36.6
5.	Borstal School	19	1775	745	42.0
6.	Special Jail	41	7473	6582	88.1
7.	Other Jails	3	1063	460	43.3
Total		1319	4,25,609	5,54,034	130.2%

Source: Prison Statistics, 2021⁸

³ The Prison Act, 1894 Section 3 (2).

⁴ The Prison Act, 1894 Section 3 (3)

⁵ The Prison Act, 1894 Section 3 (4)

⁶ Retrieved October 9, 2023, from <https://www.legalserviceindia.com/legal/article-12934-women-prisoners-in-india.html>

⁷ Retrieved June 10, 2023, from https://www.mha.gov.in/en/divisionofmha/Women_Safety_Division/prison-reforms

⁸ Retrieved June 18, 2023, from <https://ncrb.gov.in/en/prison-statistics-india>

Types of Prison inmates based on Sex as on 31st December, 2021

Sl.No	Types	Convict			Under-trial			Detenue			Others		
		M	F	Tr	M	F	Tr	M	F	Tr	M	F	Tr
1	Central Jail	79347	2194	10	149674	4729	44	2904	0	0	317	92	0
2	District Jail	32651	1558	5	210463	9051	15	366	10	0	92	3	0
3	Sub-Jail	2402	59	0	43101	1122	5	9	0	0	38	0	0
4	Women Jail		1107	1		2618	3		78	1	0	0	0
5	Open Jail	2094	59	0	22	3	0	0	0	0	0	0	0
6	Borstal School	53	0	0	692	0	0	0	0	0	0	0	0
7	Special Jail	1093	13	0	5140	222	7	102	0	0	5	0	0
8	Other Jails	206			254								
Total		117640	4990	16	409346	17745	74	3381	88	1	452	95	0
Overall total		122852			427165			3470			547		

Source: Prison Statistics, 2021⁹ *M – Male, F – Female, Tr – Transgender

Out of 1319 Jails in India, only 32 Jail exclusively for women were available. Those States were Rajasthan (7), having highest number of Women Jails followed by Tamil Nadu (5), Kerala (3), Andhra Pradesh, Bihar, Gujarat, Uttar Pradesh and Delhi (2 each). Karnataka, Maharashtra, Mizoram, Odisha, Punjab, Telangana and West Bengal have one women jail each. The sanction capacity of prison exclusively for women was 6767 wherein a number of 3808 women prisoners were housed in including 5 (five) transgender inmates. The sanction capacity of women prisoners in other Jail was 22,659 with actual occupancy of 19115 inmates.

As per the report of Prison Statistics, 2021 there were 1,650 women prisoners with 1,867 children as on 31st December, 2021. Among these women prisoners, 1,418 women prisoners were undertrial prisoners who were accompanied by 1,601 children and 216 convicted prisoners who were accompanied by 246 children. Uttar Pradesh has the highest number of Women with children (379 women with 428 children) followed by Bihar (304 women with 344 children) and West Bengal (165 women with 199 children) as on 31st December, 2021. Only 9 States/UTs have no women inmates with children.

1.4 WOMEN PRISONER & THEIR CHILDREN:

Despite some advances made in prison reform, prison administration in India has been facing many problems. There is wide gap between the theory and claims on the one hand and the hard realities and actual practices on the other. Women being biologically weaker than man they deserved much more attention. The fact that prisoners have higher rates of psychological distress and mental health problems when compared to the general population, the rate are much higher in the case of women prisoner. Although women still constitute a small minority of prison population but their number is increasing. In addition to the common kinds of distress men and women experience in prison women are more vulnerable for gender discrimination, neglect, violence, physical and sexual abuse. The Constitution of India gives status of equality to the women in India. It also imposes obligation on the State to protect the right of the women and to fulfill the requirements of International convention regarding the right of

⁹ Retrieved June 18, 2023, from <https://ncrb.gov.in/en/prison-statistics-india>

women. If laws promises were fact of life India would be women's paradise. But the reality is women in all spheres of life are facing a number of problems. Even her basic human rights are being ignored despite a number of directions from the Supreme Court and the High Court and by the recommendation of different Committees. It creates difficulties to them in the prison which requires a special attention and needs to be removed. Women usually lead protected lives and are good home makers. When they come in conflict with law and are imprisoned they find it very difficult to cope with the prison environment. Prisons isolate the women from their family and friends. They cannot perform their usual duties. This causes sadness, guilt and puts tremendous stress on them. The physical and mental health needs of women are different compared to men.. Apart from the general defects faced by prison population, some of the most vulnerable and acute problems faced by the female prisoners are:

1. Women suffer from a low social and economic status within their own families and find it harder to get back into society upon release than men. They have difficulty in adjustment to society after release from prison due to non-acceptance socially.
2. Sexual exploitation particularly in male dominated prison set up. Sexual assault to women prisoner is a major problem.
3. There is shortage of women prison. Women prisoners are facing the problem of overcrowding in prison.
4. Women prisoner in India do not even have the proper accommodation or recreation. Basic facilities are lacking for the women and their children. Women prisoner are also visibly scared of the prison staff. There is scope for vast improvement on all levels particularly in the attitude of the prison staff that needs to learn to respect the human right of women prisoner. Most of the women prisoners are also mother and their children are staying with them in the prison but the prison is not a place for healthy growth of a child. Prison environment affects the growth, survival and development of the children. Children who stay with their mother in prison are denied their basic right to pre-school education. Imprisonment of a mother with dependent child/children is a problematic issues and it needs to be addressed immediately. The effects of incarceration can be particularly catastrophic on the children and costly to the state in terms of providing for their care and because of the social problems arising from early separation. The condition of children of women prisoner in prison is pathetic without any fault on their part, they were subjected to grow up in the world of criminality. Lack of proper nutrition, inadequate medical care and little opportunity for education are the major problems.
5. Women prisoner are found to suffer from variety of health problems in the custodial environment. The initial shock of imprisonment, separation from families and enforced living with other women suffering drug withdrawal and serious mental problems affects their own mental health. Women prisoner suffer menstrual disorders, stress and depression. Women in prison have mental health problems to a much higher degree than both the general population and male prisoners.

A part from the different problems faced by women prisoners, their children too are facing lots of problems. For those women who have small kids along with them at Jail, those children were not criminals, but they are the victim of circumstances. The Prison atmosphere with its undercurrents of violence, tension, bitterness and distrust made an adverse psychological impact on the children who were staying with their mothers¹⁰. The National Institute of Criminology and Forensic Sciences

¹⁰ Kiran Bedi (1988). *It's always possible : Transforming one of the largest prisons in the world*, Sterling Publishers (P) Ltd, 1st Edition, p - 102.

conducted a research study of children of women prisoners in Indian jails. The salient features of the study brought to the notice of all Governments in February 2002, are¹¹ :

1. The general impression gathered was the most of these children were living in really difficult conditions and suffering from diverse deprivations relating to food, healthcare, accommodation, education, recreation, etc.
2. No appropriate programmes were found to be in place in any jail, for their proper bio-psycho-social development. Their looking after was mostly left to their mothers. No trained staff was found in any jail to take care of these children.
3. It was observed that in many jails, women inmates with children were not given any special or extra meals. In some cases, occasionally, some extra food, mostly in the form of a glass of milk, was available to children. In some jails, separate food was being provided only to grown up children, over the age of five years. But the quality of food would be same as supplied to adult prisoners.
4. No special consideration was reported to be given to child bearing women inmates, in matters of food or other facilities. The same food and the same facilities were given to all women inmates, irrespective of the fact whether their children were also living with them or not.
5. No separate or specialised medical facilities for children were available in jails.
6. Barring a few, most mother prisoners considered that their stay in jails would have a negative impact on the physical as well as mental development of their children.
7. Crowded environment, lack of appropriate food, shelter and above all, deprivation of affection of other members of the family, particularly the father was generally perceived by the mothers as big stumbling blocks for the proper development of their children in the formative years of life.
8. Mother prisoners identified six areas where urgent improvement was necessary for proper upkeep of their children. They related to food, medical facilities, accommodation, education, recreation and separation of their children from habitual offenders.
9. No prison office was deployed on the exclusive duty of looking after these children or their mothers. They had to perform this duty alongside many other duties including administrative work, discipline maintenance, security-related jobs etc. None of them was reported to have undergone any special training in looking after the children in jails.

1.5 SUPREME COURT GUIDELINES ON WOMEN PRISONERS & THEIR CHILDREN:

The Judiciary being the guardian of the people could do a lot to the surveillance of treatment given to the people. In a number of cases the Judiciary has held that a person in prison does not cease to be non-person. The Supreme Court by taking into consideration a number of reports and studies that were in the context of women prisoners and their children, in *R.D. Updhay v. State of AP & Ors*¹² it issued the following guidelines relating to women prisoners and their children:

1. Children inside jail with mother shall not be treated as under-trial /convict. Such child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.
2. Jail should have basic minimum facilities for child delivery.

¹¹Retrieved September 10, 2023, from

<https://www.mha.gov.in/sites/default/files/202209/GuidelineChildrenofWomenPrisoner15052006%5B1%5D.pdf>

¹² AIR 2006 SC 1946.

3. A women prisoner found pregnant, the lady Medical Officer shall report to the Superintendent and arrangement shall be made to get medically examine at Hospital.
4. Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.
5. As far as possible arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.
6. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.
7. On attaining the age of 6 years, the child shall be handed over to suitable surrogate as agreed by the prisoner mother or send to suitable institution run by Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.
8. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.
9. There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery outside the prison premises.
10. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.
11. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously

1.6 CONCLUSION:

Crime and criminals are present in every society since the advent of mankind and no such millennium can be envisaged in which criminality becomes a history of the past. So long as we are in a society one cannot expect that crimes as such will be eliminated from modern society. Crime will be there, but the task of those who are concern with the well-being of the society is to see that human resources of the nation are not wasted away. It is hard to measure the physical and mental distress women faced inside Jail. Only 32 Jails exclusively for women were available in India, they are forced to be lodged in male-dominated Jails. The young innocent children living with their mother inside jail, there is no fault on their part. Even if they are lodge inside Jail along with their mother, they are to be given proper care and treatment. The future of our nation depends upon the young generations. It is the need of the hour to make laws or makes changes to Prison Manual to cater the needs of the women and their children inside Jail. As Prison is the State subject, it is the responsibilities of the respective State government to manage the prison administration in their respective States. Article 15(3) of the Indian Constitution empowers the State Government to make laws for women and children. Therefore, if the State is willing to accept

the various problems faced by women prisoners and their children, they can do so by enacting suitable laws by virtue of Article 15 (3) of the Constitution of India.

References

1. Barnes and Teeters. (1966). New Horizons of Criminology. Prentice hall of India Private Ltd.
2. Bay,R.K. (1999). Supreme Court on Criminal Justice. Asia Law House.
3. Bhushan, Vidya.(2001). Prison Administration in India. New Delhi: S. Chand & Co.
4. Chakrabarti, N.K. (1999). Institutional Corrections: In the administration of Criminal Justice. New Delhi: Deep and Deep Publication Pvt Ltd.
5. Frank Schmalleger.(1991).Criminal Justice Today. New Jersey: A Simon & Schuster Company.
6. Gaur,K.D.(1989). Law and Society in Modern India. N. Delhi: Deep and Deep Publication
7. Jain, M.P. (2012). Indian Constitutional Law. Nagpur: LexisNexis Butterworths Wadhwa.
8. Kiran Bedi.(1998). It's always Possible. New Delhi: Sterling Publishers Private Limited.
9. Krishna Pal Malik. (2011). Penology Victimology and Correctional Administration in India. Allahabad Law Agency.
10. Katherine S. Williams. (2001). Criminology. Oxford University Press.
11. Mohender Singh Malik.(2004).Human Right and the Security Forces. The Bright Law House.
12. Pillai, P.S.A. (2012).Criminal Law. Nagpur Wadhwa:LexisNexis Butterworths
13. Srivastava, S.S.(2012). Criminology, Penology and Victimology. Central Law Agency.
14. Sharma, P.D.(1985).Police and Criminal Justice Administration in India.New Delhi: Uppal Publishing House.
15. Singh Sehgal, B.P. (2001) .Human Rights in India Problems and Perspective. Deep and Deep Publication Pvt Ltd.
16. Thilagaraj,R. (2002). Human Right and Criminal Justice Administration. New Delhi: APH Publishing Corporation.
17. Vibhute.K.I.(2004). Criminal Justice: A Human Right Perspective of the Criminal Justice Process in India. Lucknow: Eastern Book Company.