

A JOURNALISTIC AND SOCIAL OUTLOOK TOWARDS WOMEN IN CUSTODY: A MEASURE OF JAIL REFORMS

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Abstract

Female Prisoners is the study of special subject of research. Prison is an isolated social system and is easier to analyze from a social system perspective than other cases, primarily because society is too complex to examine directly. Indian society gives a respectable status to the women. Women prisoners in India jails are less in number than the male prisoners. It may be a cause of overlooking the rights of women prisoners. The main purpose of this research paper is to highlight the problems of the women prisoners, violation of the human rights of the women prisoners, and to suggest the necessary changes that should be implemented despite various provisions regarding women prisoners' rights.

Keywords: female prisoners, special subject, women rights, human rights, jail reforms

Introduction: In Indian society, woman occupies a vital position and venerable place. The Vedas glorified women as the mother, the creator, and one who gives life and worshipped her as a Devi' or Goddess. But their glorification was rather mythical for at the same time, in India women found her totally suppressed and subjugated in a patriarchal society. Article 21 and 22 of the Constitution of India gives the status of equality to the women in India in every aspect of life. It also imposes an obligation on the State to protect the rights of the women and to fulfill the requirements of international conventions regarding the rights of the women. But the reality is women in prisons are facing many problems. Even her basic human rights are being ignored despite many directions from the Supreme Court, High Court, and by recommendations of different Committees. It creates difficulties to them in the prison which requires special attention and a need to be removed. There are a number of provisions in the form of laws, rules and guidelines that protect women from exploitation in prison and guarantee them basic services

However, the implementation of these provisions is found to be largely lacking and women face a variety of problems while living in prison. There is a severe lack of female staff, which includes guards, officers, doctors, nurses, counselors etc. Accommodation arrangements are often inadequate, which is exacerbated by severe overcrowding in most prisons. There are inadequate numbers of toilets, bathrooms and other basic preconditions for sanitation and hygiene. The insufficient provision of water and menstrual hygiene products is a serious concern. There is a lack of female medical personnel and facilities meant to cover physical, sexual, reproductive and mental health needs of women in prison. Nutrition, which is closely linked to health, is a concern particularly for pregnant and lactating women and children in prison. While they are to be given a special diet, this is not always followed. Women are entitled

to have access to education while in prison, but apart from provisions for basic literacy, educational facilities are largely missing. Skilling and vocational training is also considered an important part of reformation, and every prison is meant to provide these services. Efforts in this regard are largely eyewash, with most courses imparting skills that are unmarketable, financially unviable and thus not much use to women after release. All prisoners have a right to legal aid, for which there should be legal aid cells in every prison to help with cases of complaints, under-trials, appeals etc. These are not found in all prisons, and linkages with State and District Legal Service Authorities can be improved. Physical and sexual violence is a common scenario in prisons, faced by inmates at the hands of authorities and other prisoners. The provisions for ensuring safety of women in prison and addressing their complaints need to be followed strictly, which is not the case currently. Prisons are an insulated world, and it is important that women in particular maintain contact with their social network outside prison to ensure a smooth transition after release. While the limit on number of letters, phone calls and visitations are relaxed in the case of women, more needs to be done to help them maintain contact and overcome the social stigma attached to women prisoners. Many women live in prison with their children (below 6 years of age) in cases where no other adequate arrangements can be made for their care. Spending their formative years in prison can have a huge negative impact on children and thus special care needs to be taken to ensure their physical and mental health, education and recreation. The health of pregnant women and mothers also needs to be taken care of. Re-integration in society is a challenge for many women prisoners, as they face severe social stigma, loss of family ties and employment, lack of economic independence and so on after release. Steps need to be taken to ensure that women receive all basic services while in prison, are protected from violence and supported after release to effectively take a place in society.

RECOMMENDATIONS

The adequate implementation of existing provisions will go a long way in improving 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 implementation. A National Commission for Prisons, as also recommended by the Mulla Committee should be established to provide a national perspective on prisons and be a central body responsible for these. Regular and thorough inspections of prisons are also an effective way of ensuring that rules are being followed. This should be exercised in all prisons, with inspections conducted in an independent spirit and reports shared across multiple government agencies. A robust grievance redressal mechanism should be put in place in all prisons to ensure the rights of prisoners are not violated and their concerns are heard impartially. There should be both internal and external mechanisms for inmates to represent their grievances. Special procedures should be defined at time of arrest of women to ensure their best interest as well as that of their children. Since searches at time of admission and throughout prison life can be an experience where women inmates face humiliation and violence, these should be strictly regulated by defined SOPs. Adequate provisions must be made for pregnancy and childbirth in prison including medical, dietary and accommodation-related improvements. Children of

prisoners, both the ones living with them or the ones living outside, should never be treated as prisoners themselves. Both physical and mental health needs should be addressed appropriately and regularly. Women inmates should have access to doctors and psychologists as and when needed. Educational facilities should be provided as per abilities of prisoners. Vocational training and skill facilities in prison should also be upgraded as it can improve the daily lives of prisoners.

STATISTICS ON WOMEN IN PRISON

As per the data released in NCRB's Prison Statics India Report for year 2019 there are 1350 prisons in India with actual capacity for keeping prisoners is 4,03,739 but astonishing fact is that 4,78,600 inmates are lodged in these jails surpassing its 100 percent capacity to 118.5% and only 31 women Jails. It is also a dark side of our Prisons system and failure on part of Governments that having 31 women Jails are in existence since independence and only few UT's and State have privilege to have women jails but that too with non-existent amenities. Although as per NCRB's data no of women inmates in women jails are 3652 and total capacity is 6511. Most female inmates are held in other kinds of jails due to the insufficient space of women's jail. Around 83.12 .% of all female inmates in India were sent in custody other than women's jails. During the period 2012-2017, there are no. of Inmates has increased from 3,85,135 in 2012 to 4,50,696 in 2017 showing an increase of 17.0%. During the same period, the number of jails has decreased by 2.3% (1,394 jails in 2012 to 1,361 jails in 2017). However, the capacity of inmates from 3,43,169 in 2012 to 3,91,574 in 2017 i.e. an increase of 14.1%. Thus, the Occupancy Rate of all the prisons at national level has increased by 2.6% (112.2% in 2012 and 115.1% in 2017, in percentage. The data released in NCRB 26th report of year 2020, A total of 4,88,511 prisoners as on 31st December 2020 were confined in various Jails across the country. The State of UP has lodged highest number of Inmates (1,07,395) followed by Bihar (51,934), Madhya Pradesh(45,484), Maharashtra (31,825), West Bengal (25,863) and Jharkhand (22,190). These six States together contributes 58.3% (2,84,691 inmates) of total inmates lodged various Jails as on 31st December, 2020. The total occupancy rate at National level was 118% of the total Capacity, resultantly overcrowding in jails. A total of 20,046 female inmates were lodged in various prisons at national level out of which only 15.4% (3,084) female inmates were lodged in Women Jail as on 31st December 2020. Around 84.6% of total female inmates (16,962) were lodged in other type of Jails.

Position of women in custody

Even though there are laws for the protection of women, the question which comes to mind is whether the country has fulfilled the dreamers of the Constitution. In every stage of life, women have faced discrimination. Owing to our patriarchal society, women have traditionally been kept on a lower footing and when society declares a woman as an offender who is convicted and given punishment, her position becomes unimaginable. The problems which women prisoners face are endless with many of their problems remaining unresolved. Police and jail authorities have wide discretion in their hands and these results in violation of their basic human rights. Violation of rights of women prisoners continues increasing despite a plethora of provisions contained in the Indian Constitution and International Conventions. As India is a

patriarchal

society, women have traditionally felt inferior to men. We continue to come across incidents where women are raped by men and abused by her relations. When she retaliates, she is declared an offender and dumped into prison in violation of her basic human rights. Many women belonging to lower economic strata are often dragged into unlawful activities such as drug dealing, theft and prostitution while all they are trying to achieve is but meeting their basic needs. According to Human Rights Council, there are more than 700,000 women prisoners across the globe out of which India has more than 18,000 female prisoners and not all of these live-in female prisons. Existing prison conditions, gender discrimination, custodial torture, inhuman treatment towards children, lack of basic inhumanities and inaccessibility to legal services further aggravate their sufferings.

Definition of custody

The word 'custody' has been derived from the Latin word "custodia" which means "keeping a watch or guard." It means to apprehend someone for a reason which could either be to prevent the person from committing a crime or for the safety of a person. At times, people use 'arrest' and 'custody' as synonyms. But there is a difference between the two. A person is arrested if he is guilty of committing a crime or suspected of the same but custody means to guard someone or keep him in prison temporarily. Whenever a person is arrested, he/she is kept in custody. Thus, we can say that every arrest includes custody but not vice-versa. There are 2 types of custody:

1. Judicial custody
2. Police custody

Judicial custody

- When a person is kept in custody by a magistrate, it is called judicial custody. Unlike police custody, here a person is kept in jail on the orders of the magistrate for a certain period of time which is temporary. The person or the suspect becomes the responsibility of the magistrate and is kept away from the eyes of the public to prevent him from any kind of abuse or harassment by the public or a class of society.
- When a person is first arrested due to an FIR lodged in the police station and is accused of a cognizable offence, he is brought before the magistrate within 24 hours. The magistrate decides whether to release him on bail or send him to judicial custody or police custody. The period of judicial custody can extend up to 90 days in the cases which involve the death penalty as punishment, imprisonment for life, or imprisonment for 10 years or more.
- If a person is in judicial custody and the investigation is still going on and the charge sheet has not been filed by the police within 60 days if the offence has imprisonment for 10 years or less than 10 years and within 90 days for offences having imprisonment for 10 years or more, and he has not applied for bail, he will continue to be in custody.
- According to Section 436A of Criminal Procedure Code, 1973 if a person is in judicial

custody for half of the maximum punishment that could be awarded for the offence and the trial is pending in the court, he is eligible to apply for default bail.

Police custody

- When a person is arrested by police for charges of committing a heinous crime or on suspicion, he is detained in police custody. The rule to produce a person before a magistrate within 24 hours of arrest is given under Section 167 of Criminal Procedure Code, 1973. According to this Section, when the accused is produced before the magistrate and he believes that there is a need for further investigation or interrogation, he can order the person to police custody for the next 15 days which can be extended to 30 days in certain cases depending on nature, gravity, and circumstances of each case.
- The magistrate has been given the power under Section 167 to remand a person in police custody. He can also order to change the custody from police custody to judicial custody. In such a situation, the time period of police custody is deducted from the total time period of judicial custody. In the case of *State v. Dharampal* (1982), it was held that a person must be sent to police custody within 15 days from the date he is produced before the magistrate under Section 167 of the Criminal Procedure Code, 1973. But if the accused is in judicial custody, he can be sent to prison either in 15 days or even after that & In the case of *Mithabhai Pashabhai Patel v. State of Gujarat* (2009), it was held that an accused cannot be taken into police custody if he has been granted bail unless his bail is canceled.

Recent trends and developments in law relating to judicial and police custody

The procedure for arrest in criminal cases is given in Chapter 5 of the Criminal Procedure Code, 1973. After a person is arrested by the police, he is to be produced before the magistrate within 24 hours, and then the magistrate after the evidence is produced can send him back to police custody for further inquiry or investigation or judicial custody. The time period of police custody is 15 days after this period gets over, the magistrate if thinks fit can remand the person to judicial custody where the maximum time period for detention is 90 days for non-bailable offenses punishable with the death penalty or imprisonment for 10 years or more and 60 days in case of bailable offenses.

Legislative provisions relating to women in custody

Judiciary has been playing an active part in responding to violations of the human rights of female prisoners through its interpretation of Articles 21, 19, 22, 37 and 39 A of the Indian Constitution. The Legislature has also come up with different laws enacted for the protection of prisoners in India including Prisons Act, 1894, Prisoners Act, 1900, Identification of Prisoner's Act, 1920, Transfers of Prisoner's Act, 1950, Prisoners (Attendance in Court Act), 1955, Probation of Offenders Act, 1958, Repatriation of Prisoner's Act, 2003 and Model Prison Manual, 2016. Apart from these, we also have the Juvenile Justice (Care and Protection) Act, 2000, Code of Criminal Procedure, 1973 and Indian Penal Code, 1860 where the emphasis is on rehabilitation, vocational training and transfer of prisoners from over-populated prisons to less congested ones. In the last few decades, the urgent need for prison reforms has come into

focus and it has been reiterated by courts that existing prison conditions are not conducive for their reformation. The All India Committee on Jail Reforms, 1980-83 who studied the problem of prison reform in depth, observed about women prisoners that “it is the small number of women in prison, which is responsible for their needs being neglected.” They are not aware of the rules of remission or premature release, and live a life of resignation at the mercy of officials who seldom have understanding of their problems. The kind of shy, inhibited village women that usually land in jails have no courage to communicate their needs to the male staff posted at their jails, and they maintain “Pardah” as such on their sufferings as on their faces. They have no means of communicating their needs to higher officials as there is hardly any women officer at headquarter of the prison department who would appreciate their needs and requirements and made huge recommendations in respect of treatment of women prisoners.

In 1986, an exclusive National Expert Committee on Women Prisoners was set up by the Government of India under the chairmanship of a very eminent retired judge of Supreme Court, Justice Krishna Iyer to undertake a study on the situation of women prisoners“ in penal and correctional system of the India. Committee visited the central jails and a few representative district jails, sub-jails and police-lockups of these states: Bihar, Maharashtra, Orissa, Uttar Pradesh, Assam, Tripura, west Bengal, Andhra Pradesh, Karnataka, Kerala, and Tamil Nadu. During the visits to jails to these states, committee noticed a variety of disabilities women and girls suffer because of their gender in the criminal justice and correctional processes. Justice Krishna Iyer summarizes the whole condition of women prisoners, as “women in custody are tragic testimony of judicial futility, statutory impotency and implementation calamity”. Thus, the committee made exhaustive recommendations for bringing about improvements in the management of women prisoners covering various facets and recommended the formulation and adoption of national policy on custodial justice to women. The committee recommended a statutory autonomous body to design as the national authority on custodial justice to women and also formulated a draft “legislative-cum-administrative” code for consideration of the government in this regard. These approaches are (a) maintaining the dignity of women in the custody, (b) rehabilitation and social defense should be the principal purpose as well as the outcome of holding women as prisoners and under-trials in the prison. The committee also held that although, an increase in the number of women prisoners in the country had slightly augmented, facilities for women prisoners in forms of accommodation, health, food, medical, education and other basic necessities, the quantum of those facilities is still not adequate. The Parliament Committee on Empowerment of Women, 2001-2002, headed by Smt. Marget Alva, took up the subject “Women in Custody” for detailed examination of the conditions of women in detention and therefore visited the jails of the following states: central prison, Mumbai, Tihar Jail, Delhi, model Jail, Chandigarh, central prison, Orissa, presidency jail, Kolkata, Nari Bandi Niketan and District jail, Lucknow and made some eye opening observations that there is total neglect on the part of the concerned authorities in providing basic needs to women prisoners. The general condition relating to food, clothing, recreation, hygiene is not proper and needed considerable improvement. What is more pathetic is the fact that women inmates who obtained

bail were still languishing in jails for want of surety. In 135rd Report of the Law Commission of India 1989, the commission discussed the certain questions relating to women in custody, referred to commission by the Ministry of Law and Justice, the Ministry of State crop up out of the report Vol. 1, submitted by the national expert committee on women prisoners, 1986-87, first, relating to Nari Bandigriha Adalat in the nature of mobile judicial camp in order to provide speedy justice to women offenders, second, issue relating to the efficacy and relevance of various legislations having a bearing on women's status in custody and criminality. Here only those provisions of these legislations are mentioned which bear relevance for the treatment of women prisoners. About sections 376-B, 376-C, 376-D, of Indian penal code the commission held that these provisions of the Indian Penal Code designed to deter potential offenders from the committing rape or cognate offences including subtler forms of seduction or harassment, are fairly adequate so far as women in custody are concerned. About Section 416, Capital Sentence on a Pregnant Woman which "provides that if a women sentenced to death is found to be pregnant, the high court shall order the execution of the sentence to be postpone and may, if it thinks fit, commute the sentence to imprisonment for life". Commission held that this section should be substituted as provided "if a women sentenced to death is found to be pregnant, the high court shall commute the sentence to one of imprisonment for life." After thorough examination of sections 3 and 4 of the Probation of Offenders Act, 1958 with regard to women prisoners, the commission suggested to amend the same i.e Section 3 of Act, (which deals with the power of the court be release a convicted offender on admonition) should be amended, by providing that in deciding about such release, the court shall have regard to the circumstances of the case, including the nature of the offence & character of the offender (as at present) & the fact that the offender is a women & Section 4(1) of the Probation of Offenders Act, 1958, which empowers the court to release offender convicted of certain offences on probation of good conduct should be amended on the same lines as section 3 of the act recommended to be amended as above, the court shall have regard also to the fact that the offender is a women. In case of advanced pregnancy, should be shifted to female ward of the government hospital.

Discussion and Conclusion

Correctional facilities are a necessary aspect for the administrative component of a country to function efficiently. From this paper, it is clear that there are a number of major issues that women prisoners face during incarceration. These issues have a negative impact on the women and decrease the likelihood of them For example, while shackling of pregnant incarcerated women is generally condemned, only six states have laws expressly condemning the practice (National NOW Times). As such, prisons in the states which do not have explicit laws against this practice can engage in this practice without fear of legal redress. There have been calls for the establishment of a set standard for how pregnant women should be treated during pregnancy and birth in all prisons. As has been noted, conditions such as overcrowding, a lack of access to medical care and increased assault against the prisoner exacerbate problems that result in suicide risks among the inmates. The prison administration can therefore alleviate suicide rates

by improving the living conditions of the inmates. In addition to this, protection of younger prisoners from victimization and bullying can reduce the amount of distress they experience therefore reducing their risk of committing suicide. The ultimate goal of correctional facilities is to mold convicts for future reintegration into the society. Through social justice and mentoring programs, ex-convicts can be successful reintegrated into society and allowed to make a meaningful living and consequently play a part in the noble task of building the nation. By accepting the ex-prisoner women into the community, the society will demonstrate its faith in the rehabilitative property of the prison systems and absolve the ex-felon since they have already repaid their debt to society by serving time. While the role played by the criminal justice system is imperative for the well being of the society, the human rights of the prisoner must be respected and conditions made as humane as possible. As it currently stands, incarcerated women's access to abortion services is not guaranteed and support during pregnancy is inadequate. Women are also susceptible to suicide and psychological trauma in pregnancy. Correctional service institutes must strive to address these problems so as to make women's stay at prisons less traumatic.

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