

Women Prisoners: Causes, Condition and their Rights

Zainab Jafri

Department of Social Work, IGNOU, New Delhi

Abstract

Women prisoners are the neglected section of the society their rights and need violated in the prison itself, this article highlight the concern towards the condition of women prisoners across the country. initially, prison are predominately built for the male criminals where they did not focus toward the gender specific needs, but now a days the number of women prisoners gradually increase and they accommodate in common prison in separate barrack where their needs have not meet besides these they are facing the multiple problems regarding with infrastructure, staff, developmental programs, health, sanitation and hygiene. Although, the number of women prisoners are relatively low than men, their number may be the reason for neglection of their needs and problems by prison authorities and policy makers. The aim of this article to elaborate the problems and challenges faced by women prisoners inside prison and tries to find out the causes which lead them to commit crime with the help of theoretical modals. NCRB data 2015 shows that over 3 lakhs women arrested in different crime which is the alarming situation, it should be address enormously. Purpose of this paper is to highlight the violation of the human rights of the women prisoners, condition of women jails, to enumerate human rights and constitutional rights of the women prisoners.

Keywords: Women prisoners, Causes, Conditions and their rights.

Date of Submission: 20-09-2021

Date of Acceptance: 05-10-2021

I. INTRODUCTION

Crime is outcome of diseased mind and jail must have an environment of hospital for treatment.

Mahatma Gandhi

Imprisonment as a method of punishment has evolved over the centuries. In India, and most of the world today, prisons are viewed as centers for the reform of criminals, rather than just a means of punishment. Prisons are a correctional setting to provide rehabilitative programs for the deviant behavior people, mostly male are law violator but in recent years tendency of crime among women were also increase but our mental picture about women as a law abiding not law violator nevertheless the rate of female inmates increase at disproportionate rate and their needs have not been fulfill in prison regime because prisons were predominately design for the male inmates, due to this reason female inmates often facing problem regarding infrastructure, administrative staff, program and policies and other gender specific needs. However male and female prisoners share some psychological and social characteristics, nevertheless women prisoners also have distinctive, gender-based needs.

Traditionally, the Indian women whose role was confined mainly to the four wall of the house. They are the foundation stone of the family and society in general. She creates life, nurses it, guards and strengthens it. Now under the spate of social change they have entered the job sectors and are actively participating. Women are participating in economic activities, political nsulations and in every aspect of social life along with male folk. They are more self-reliant and built their own identity. However, this changing situation has built the negative consequences in this process women have become subjected to more stress and strain in her personal and social life than before. In India, women are home maker. Her strained relationships within family disturb the peace and tranquility which might lead family disorganization, marital discord, stress and failure in coping with situation consequently they getting involved in deviant ways. In addition, general poverty, illiteracy, gender-bias, and many more such factors drive them to involve in criminal activities.

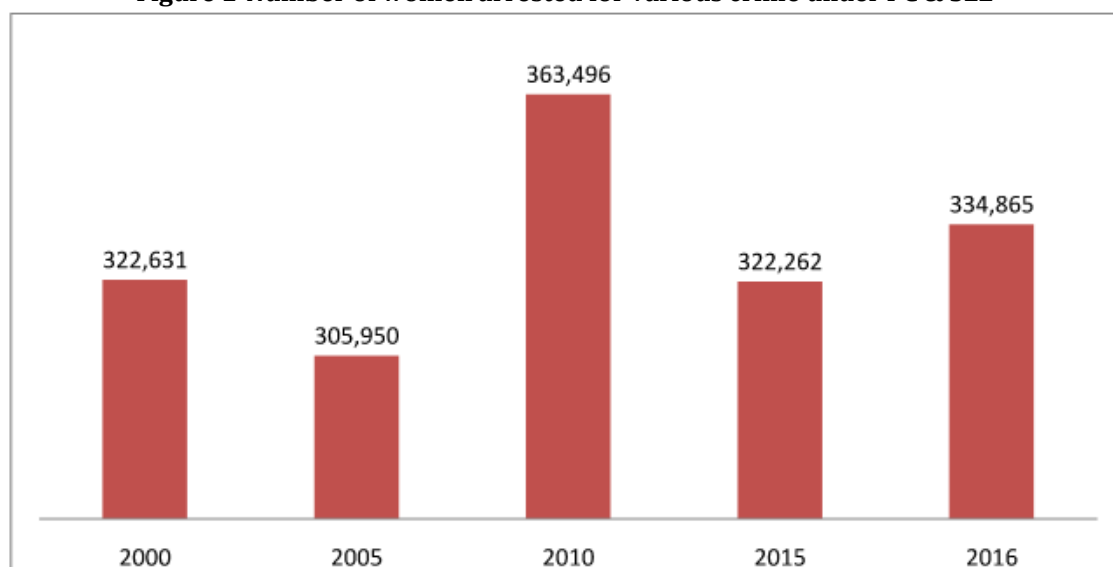
Women's crime and poverty are hand to hand, most of the women criminals come from socially and economically low segment of society. Women are particularly vulnerable to being detained because of their inability to pay fines for petty offences and to pay bail. Typically they are young, unemployed, have low levels of education and have dependent children. (Women in Crime, 2000). At the same time, social stigma attached to women crime and imprisonment than men's and they have been ostracized by their families and society.

The honorable supreme court of India has affirmed the basic rights of prisoners-stated that there could be some several circumstances which lead them to commit crime but nevertheless prisoner's rights could not be barred, they are entitled to all basic human rights, human dignity and human sympathy. Further Ministry of home affairs added to improve the condition of prisons through regular audits, hiring and regular staff etc. Many international treaties and conventions lay down broad guidelines on the treatment of prisoners in general. Some notable conventions on the rights of prisoners are Geneva conventions, the UN standard minimum rule for the treatment of prisoners and United Nations Rules for the treatment of women prisoners and non-custodial measures of women offenders (Bangkok rule) particularly women prisoners is dismal and in need of urgent improvement. The UN General Assembly adopted the Bangkok Rules in 2011, which lay out rules for the treatment of women in prison and prescribe certain noncustodial measures for women offenders. In 2010, Bangkok rule has been rectified by India to prevent the violation of prisoners. In 2015, the Nelson Mandela Rules were adopted by the UN General Assembly, which set out the international minimum standard for the treatment of prisoners including women.

Crimes by Women

In India, statistic on female criminality reveals that female criminals constitute a numerically smaller proportion than men. In 2016, over 3 lakhs women were arrested under the Indian Penal Code (PC) and Special and Local Laws (SLL). A large number of these women were arrested for crimes under the Prohibition Act, for cruelty by relatives of husband and rioting etc. As can be observed from Figure 1, there is a relatively consistent pattern over the last 15 years, with the number of women arrested for various offences remaining between 3-3.6 lakhs.

Figure 1-Number of women arrested for various crime under PC & SLL



Statistical Facts

PSI 2018 reveals that 4,66,084 people incarcerated in Indian jail in which the women population are 19,242 of the entire prison population. In India, prison statistic report observed that number of women prisoners have been increase with the rate of 3.3% of all prisoners in 2000, 3.9% in 2005, 4.1% in 2010 and 4.3% in 2016. Although women prisoners are in minority but their numbers are increase faster than the male prisoners on every continent. (Global Prison Trends 2017 by Penal Reform International and Thailand Institute of Justice)

II. CAUSES OF FEMALE CRIMINALITY

Biological Viewpoint

Lombroso was the first to draw attention to the biological fact. He stated that “female deviance as rooted in biological makeup”. Female criminals become more dangerous than men because their cruelties are much more refined than men. Lombroso and Ferrero (1895) postulated a theory that was based on the belief that all individuals displaying anti-social behavior were biological throwbacks. The born female criminals were considered to have the criminal qualities of men and the worst qualities of women. Pollack in his book “The criminality of Women” claimed that women involved in hidden crimes such as murder by poisoning, abortion, kidnappings because of their cunning behavior. He also observed that biological factors including lesser physical strength, as well as psychological concomitants of menstruation, pregnancy, etc. enter into the etiology of female crime. However, we feel that Indian women are inclined to crime more because of social or economic deprivation than being biological throwbacks.

Psychological Viewpoint

Under the psychological viewpoint, in Indian society women considered as a second class citizen in the society. Society impose traditional roles on them as mothers, wives they lost their individual identity and maladjusted women refuse or fail to internalize the values associated with the role in the society. They would have encountered deteriorated living condition, disappointment in love and endless undesirable experience which make difficult for them to deal with reality which develops psychological pressure. Stress is higher for women on average than for men, primarily due to blocked opportunities, and the conflicting message of motherhood versus work. Generally women try to suppress the anger which copes into guilt, failure and sadness. Consequently, it explodes into the form of lethal crimes.

Sociological Viewpoint

R.K. Merton develops strain theory in which he stated that social structure and society equally responsible for crime causation. Further, he said that individual likely to commit crime when they fail to attain culturally define goals. We expected from women to adjust according to the world around her. This unequal position, social oppression, economical dependencies enforce them to commit crime. Social environment is responsible for the deviant behavior of the individual. In 1939 Edwin Sutherland highlighted the concept of learned behavior in his book “Principle of Criminology” in which he propounded the theory of Differential Association which stated that a person will become a criminal if he/she associates him/herself with more law violator than law abiding.

Problems of Women Prisoners

Women prisoners encountered many problems during imprisonment. Problems are more complicated in case of women prisoners than men. Women prisons across the country have many related to proper accommodation, women staff, proper sanitation and hygiene facility besides these women prisoners need gynecologists, and other gender specific needs but often their needs are overlooked by prison authorities. However, governments initiate several programs for the development but that are not effectively reflect on ground and their condition are still vulnerable.

According to the Prison Statistics India 2019 the number of total prisons are 1350 and 31 women prison across country. The following are some of the key areas of concern, some of them discuss below:-

- Problem with accommodation.
- Inadequate staffing
- Absence of family contact.
- Lack of education and work programs.
- Inadequate proper healthcare.
- Disproportionate representation of indigenous women and foreign women (R. Taylor, 2004)

Shortage of Women Prison-In India, overcrowding is key problem in prisons in 2019, 118.5% was reported as a national average occupancy rate. Overcrowding has been a more notable issue in case of women prisoners especially for those women who lives with their children because there is a shortage of women prison and lack of proper infrastructure for them. They have been pressurized to adjust in limited facilities. Overcrowding itself is a generator of many problems. In such circumstances, it becomes impossible to perform day to day activities of the life. Overcrowding can worsen hygiene conditions and health problems with even minor infections spreading quickly. The disproportionately low number of toilets and bathrooms exacerbates the situation. Overcrowding also has severe psychological effects on prisoners forced to live in such close quarters with one another.

Sanitation and Hygiene- Most prison are lacking basic facilities of sanitation and hygiene although there is a prescription a prison Manual to ensure one toilet and one bathing cubical for every 10 person but this is rarely seen on the ground. Lack of water supply is another issue which aggravates the low level of sanitation and hygiene. Prisoners also provided with very limited clothing and they do not have opportunity to wash regularly. Women falls for mensuration in the age group of 18-50 they need proper sanitation facilities. They are not getting a suitable amount of Sanitary napkins they usually get maximum three pads per month which is not sufficient and in some prisons they are charged for napkins. This leads women to resort to using unhygienic materials such as cloth, ash, pieces of old mattresses, newspapers etc.

Health- Women prisoners confronted with the health issues which encompass a wide range of physical and mental health. Sometimes women prisoner suffer with gender based problems in which they need gynecologist but often lady doctors are not available. Concern of mental health are often not given adequate importance, and women suffering from mental illnesses are often housed in prisons due to lack of other appropriate facilities. High blood pressure, weakness, anxiety, depression stomach complain, urinary problem, hypertension, loss of appetite dental problems are the most common health issues among women prisoners.

Inaccessibility of Legal Services- Most of the women prisoners are illiterate and they are not aware about their legal rights because of their unawareness they are not getting satisfactory legal aid in prison. Inaccessibility of legal services is a major problem which needs to be resolved. All prisoners have right to legal aid, to deal with cases of complaint, under-trials, appeals etc.

Article 39A of the Indian Constitution provides for free legal aid to the poor and weaker sections of society and ensures justice for all.

Prison staff-As of 2019 the total number of women jail officers/staff was 7794 including 254 medical staff. There is a scarcity of supervisory level female officers. The National Prison Manual prescribes the appointment of one lady DIG attached to the Prison Headquarters to look after women prisons, staff and prisoners in the state. In May 2017, the Honorable Supreme Court noted that there is a huge shortage of staff in almost every jail of the country. The lack of staff in the context of women prisoners translates to the reality that male staff often becomes responsible for female inmates, which is undesirable. The presence of women inmates necessitates gender specific services, which should be provided by female staff. Hiring of female prison staff should be made a priority.

Rights of Women Prisoners

International Human Right Standard Apply to the Imprisonment of Women

A person does not lose their human rights when they are imprisoned. As stated in the 1948. Universal declaration of human rights, the state may only limit the exercise of a person's rights and freedom including the rights and freedom of a person who is a prisoner for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (Began Bastic 2008)

There are following universal declaration of human rights and any other UN human rights treaties-

- Universal Declaration of Human Rights.

- International Covenants on Civil and Political Rights.
- International Covenants on Economics, Social and Cultural Rights.
- Convention on the Rights of the Child.
- Convention on the Elimination of all form of Discrimination against Women.
- Convention on the Elimination of Racial Discrimination; and.

UN Standard Minimum Rules for the Treatment of Prisoners

- Rule 8 (a) separate institution for male and female detainee; in an institution which receive both male and female the whole premises of the women ward shall be entirely separated.
- Rule 23 (1) in women's institution there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangement shall be made wherever practicable for children to be born in a hospital outside the institution.
if a child is born in prison, this shall not be mentioned in the birth certificate.
- Rule 23 (2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.
- The National Commission for Protection of Child Rights (NCPCR) has recommended that women in jail who are pregnant, ill or have children dependent on them should be considered for early release on personal bonds.
- Rule 53(1) that in an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.
- 53(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by woman officer.
- 53(3) women attendant shall be attendant and supervise only by women officers.

Constitution Rights of Women Prisoners

- Constitution of India contains various special provisions for the care, welfare and development of women prisoners. Rights of prisoners entitled in Fundamental right in part and Directive Principle of State Policy (DPSP) part V.
- Article 12 (2) of this Convention provides that States Parties shall ensure to women get appropriate services in connection with pregnancy, confinement and the post-natal period, granting free service where necessary, as well as adequate nutrition during pregnancy and lactation.
- Article 14 provides equal protection of laws to the women in India and Article 15 prohibits the discrimination on grounds of sex. But still Indian women prisoners are facing a number of problems.
- Article 39 A of the Constitution of India empowers the women prisoners to secure free legal aid. it provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or others disabilities.
- In 2006, the supreme court issued guidelines in case of RD Upadhyaya vs. state of AP case to ensure that certain basic standards are observed with regard to children of women prisoners in this guidelines cover the area of food, health, education, medical care, clothing and recreational facilities.
- National policy on prison reform and correctional administration has been framed in 2007, which provides a number of directives related to women prisoners- ensure the human rights of women prisoners, avoiding overstay of under trials etc. It further included that women prisoners shall be protected against all

exploitation. Work and treatment programs shall be devised for them in consonance with their special needs.

Enactment and Rules

All issues related to prison, reformatory, welfare, borstal institution, prison arrangements and other institution come under the State government as per the state list in seventh schedule of constitution. The rule of incarceration determined under following Acts.

- Indian Penal code, 1860
- Prison act, 1894
- Prison act, 1900
- Identification of prisoner's act, 1921
- Exchange of Prisoner's act, 1948
- Transfer of prisoner's act, 1950
- Prisoner's attendance in court, 1955
- Probation of Offenders act, 1958
- Code of Criminal procedure, 1973
- Repatriation of Prisoner's act, 2003
- Model Prison Manual, 2003
- Model Prison Manual, 2016

Prison Act- Prison Act was passed in 1984, the main provision of this act are following below.

- Under this act it is the State duty to provide accommodation for the prisoners in prison. For each prison there shall be a superintendent, a medical officer, a jailor and such other officers are necessary.
- Ward of the male and female prisoners shall be separated. Un-convicted prisoners kept apart from the convicted prisoners.
- Provision related to medical help, sick prisoners entitled to get medical help without delay by qualified medical representatives.
- Provision for treatment of under-trials, civil prisoners, parole and temporary release of prisoners.

The Prisoners Act, 1990 it is the duty of government for the removal of any prisoners detained under any order or sentence of any court, which is of sound mind to other place where he/she will be given proper treatment.

The Transfer of Prisoners Act, 1950 this act was enacted for the transfer of prisoners from one place state to another for rehabilitation or vocational training and from over-populated jails to less congested jails within the state.

III. CONCLUSION

Crime committed by women may be the reaction of social, economic, sexual, physical, mental harassment by their families or society. Indian society is male dominant and female consider as a subordinate they are economically dependent on the male member. This unequal position of women in society is the leading cause of their deviant behavior. However, the number of women prisoners is very less across country but it increase at disproportionate rate. Women prisoners are marginalized in prison itself, their rights are violated in prison. Living condition of the women prisoners are deteriorating in prison. They are facing many problems related to health, sanitation, hygiene, accommodation, legal support, However, government introduce several development programs, audits, reports for the betterment of prisoners and prison but nevertheless condition are standstill. Many national and international treaties work for the upliftment of prisoners but authorities overlooked the gender specific needs of women prisoners. There is vast scope of improvement on all level particularly in the attitude of the prison staff that needs to learn to respect the human rights of women prisoners.

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Zainab Jafri. "Women Prisoners: Causes, Condition and their Rights." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 26(10), 2021, pp. 13-19.