



## WOMEN PRISONERS- AN OBLITERATING COMMUNITY

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As a method of punishment, imprisonment has evolved over the years. In most of the world today, and in India too, the definition of prison somewhat has a positive connotation attached with itself. Prisons are not merely seen as a means of punishment, but as reformation centres for criminals. The Hon'ble Supreme Court has advocated for a "therapeutic approach as an effective method of punishment"<sup>1</sup>. MHA advisories on prison administration have stressed on the need for a positive prison environment stating that- "The atmosphere of prisons should be surcharged with positive values and the inmates should be exposed to a wholesome environment with appropriate opportunities to reform themselves."<sup>2</sup>

Prison and its administration is a state subject detailed in List II, Schedule VII of the Constitution of India<sup>3</sup>. Different States' and Union Territories' prison establishments comprise several tiers of jails – central jails, district jails, sub jails as well as women jails, borstal schools, open jails and special jails. The past few decades have observed a drastic increase in the prison population further creating various challenges such as health and hygiene, overcrowding, security etc.

<sup>1</sup> *Inhuman Conditions in 1382 Prisons, In Re*, (2016) 3 SCC 700.

<sup>2</sup> Ministry of Home Affairs, available at <https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/PrisonAdmin17072009.pdf> (last visited on May 22, 2020).

Since the jails were designed primarily to cater to the requirements of male inmates, special efforts and steps should necessarily be taken to ensure that the basic needs of female inmates are being catered to. Since the male counterparts have access to certain resources in the prison system, female inmates, in majority situations, end up facing more obstacles. The authors aim to discuss the key areas of overcrowding, sanitation and hygiene conditions and children living in prison systems along with their mothers. The authors also aim to highlight the above, mentioned issues with the help of latest statistics recorded by National Crime Records Bureau in the year 2018.

## THRONGING IN PRISON SYSTEM

Thronging or overcrowding is a situation which arises when more inmates are living than the permitted strength. Over the years, it has become one of the key problems which are faced by the prisoners. Thronging results in poor hygiene, lack of sleep and nourishment and as far as the basic rights of the prison inmates is concerned, provision of reasonable space and facilities to them becomes necessary. The rate of occupancy can be defined as the number of inmates staying in jails against the permitted capacity of 100 inmates, which means, if the occupancy rate is more than 100, it results to overcrowding<sup>4</sup>. Among the States, Uttar Pradesh has reported the highest overcrowding (176.5%) followed by Sikkim (157.3%), Chhattisgarh (153.3%), Uttarakhand (150%), Maharashtra (148.9%),

<sup>3</sup> The Constitution of India.

<sup>4</sup> National Crime Records Bureau (Ministry of Home Affairs) Government of India, "Prison Statistics India, 2018" 5 (December, 2019).



Madhya Pradesh (147%) and Meghalaya (143.5%). Among Union Territories, Delhi has reported the highest overcrowding (154.3%).<sup>5</sup>

There were only 24 women jails in the country as on 31<sup>st</sup> December, 2018 and 3243 female inmates out of the 19242 female inmates at the national level were lodged. 21 States/Union Territories were not having any separate women jails. Maharashtra at 159.2% reported the highest overcrowding in women jails, followed by West Bengal at 142% and Bihar at 107.9%.<sup>6</sup>

Due to the lack of women jails in various States and Union Territories, the occupancy rate of female inmates in jails, except the women jails, shows that Uttarakhand reported the highest occupancy rate at 164.9% followed by Chattisgarh at 146.6% and Uttar Pradesh at (134.8%).<sup>7</sup>

According to the Modern Prison Manual, 2016, four types of living accommodation are prescribed:

1. Barracks with accommodation for twenty women prisoners;
2. Dormitory Accommodation for four to six women prisoners;
3. Single room accommodation for women prisoners needing privacy owing to pursuance of studies; and
4. Cells for segregation of women prisoners for the purpose of security and punishment.<sup>8</sup>

Accommodation provided to the women prisoners in particular, should meet the basic requirements of any other living human, such

as adequate amount of lighting, ventilation, minimum floor spacing, and the cubic content of air- comprising the basic living standards.

However, the repercussions of overcrowding sometimes become even more conspicuous in the case of women, more so, because they are confined to smaller enclosures of the jail due to the meagerness of infrastructure for them. It is due to the overcrowding that women tend to be susceptible to poor health conditions, so much so, that even the minor infections take no time to spread. The inordinately less number of toilets and bathrooms augments the situation. Thronging also has distressing psychological effects on prisoners who are forced to live in such close vicinity with each other. Though the Modern Prison Manual, 2016 has laid special emphasis on under trial prisoners and convicted prisoners to be accommodated separately, it is not possible to adhere to this guideline because of acute shortage of space.

It is a belief that a young offender today can be a hardened criminal tomorrow, therefore it is suggested that young offenders are accommodated separately rather than being placed with older women offenders. However, it is again due to the problem of overcrowding that young offenders, aging from 18 years to 21 years of age, find themselves living with older women offenders, further having a psychological impact. It is due to the issue of thronging that the prisoners' children end up living in sparse and dingy conditions.

<sup>5</sup> Ibid.

<sup>6</sup> National Crime Records Bureau (Ministry of Home Affairs) Government of India, "Prison Statistics India, 2018" 14 (December, 2019).

<sup>7</sup> National Crime Records Bureau (Ministry of Home Affairs) Government of India, "Prison Statistics India, 2018" 15 (December, 2019).

<sup>8</sup> Government of India, "Model Prison Manual, 2016" 248 (Ministry of Home Affairs, 2016).



By reason of the fact that women prisoners still remain to be a minority in the prison population, the infrastructural facilities and specialized services are not provided to them. Because there are hardly any separate women prisons in India, huge numbers of women who have been convicted for petty offences often find themselves strangled in the system of high security and restrictive measures imposed on hardened women criminals, that are very few in number, forcing the former to accommodate with the latter.

### **SANITARY CONDITIONS AND HEALTH OF WOMEN PRISONERS**

It should be kept in mind that there are various laws and guidelines available for uplifting the condition of prisoners, categorically speaking for women prisoners, but it is due to the scarcity of space and resources that these laws and guidelines are not applied judiciously. The Prison Manual, 2016 specially states that a woman prison should have a ten bed hospital for women and that at least one and more gynecologist and psychiatrist should be provided<sup>9</sup>. However, there is no specific provision for women prisoners accommodating in other kinds of prisons. In reality, there are barely such amenities available to the women prisoners. In fact, these things come much later in the list; prisoners are at least entitled to bathe themselves as and when they want to, however, due to the scarcity of water, many women prisoners end up without bathing and washing themselves for multiple days, leading to poor personal hygiene. The number of washrooms is not adequate as per the number of prisoners and falls totally out

of proportion. The culture of maintaining sanitation by periodically getting the pest control done alongside the cleaning does not exist in the prisons. It is often the women prisoners in general who are made to clean to washrooms, open areas, making them more vulnerable to diseases.<sup>10</sup>

It is a well-known fact that the menstrual age of a woman starts from 13 years approximately and lasts till 50 years. In the prisons, there are a great number of women ranging between the age of 18-50 years and it is perceptible that they undergo their menstrual cycle every month. Provision of sanitary napkins is not a luxury but a necessity for every woman, whether rich or poor, whether inside the jail or outside. However, women prisoners are not even subject to their basic necessities of obtaining sanitary napkins from the prison authorities, instead they end up paying to obtain this basic facility, and sometimes, in order to avoid spending the meagre amount of money that these women get by performing labor work in the prison, these women prisoners resort to using unhygienic materials such as cloth, soil, old mattress pieces, leaves, ashes etc, increasing the risks of reproductive diseases and even affecting their maternal mortality<sup>11</sup>.

The needs of a woman in prison are clearly not prioritized and one of the main reasons is that they are the minority when it comes to prison statistics of number of male detainees and number of female detainees in India.

### **SUICIDES IN WOMEN PRISONS**

<sup>9</sup> Government of India, "Model Prison Manual, 2016" 252 (Ministry of Home Affairs, 2016).

<sup>10</sup> Government of India, "Women in Prisons India" 14 (Ministry of Women & Child Development, 2018).

<sup>11</sup> The Indian Sanitary Pad Revolutionary, *available at:* <https://www.bbc.com/news/magazine-26260978> (last visited on May 27, 2020).



The authors would now like to draw the attention towards the suicidal aspect in women prisons. There is a high risk of suicide for women in custody. Female pre-trial inmates attempt suicide much more often than their female counterparts in the community and as their incarcerated male counterparts. It should also be noted that the rates of fulfilled suicides are found to be higher than those of men. More so for women, the fact that their imprisonment itself has such an exemplary effect on their relationships outside the prison, it is the societal stigma that shoots up the suicidal impulses. As per data on suicide in prison in India, the rate of suicide by women inmates are two times higher than their male counterpart<sup>12</sup>.

Women's health requires special attention in terms of physical, mental, sexual and reproductive health. They have to be re-socialized and reeducated, needing substantive changes in their perceptions, attitude and behavior. All this pre-supposes their good health, not only the absence of disease but also the presence of a feeling of well-being and happiness. Also, the steps should be taken to ensure that women with psychosomatic disorders or psychological disorder should be accommodated in separate jails and should be provided necessary counseling and treatment on a regular basis.

Even the Constitution of India, 1950 describes under article 21 that no person shall be deprived of his life or personal liberty except according to procedure established by

law<sup>13</sup>, then depriving the prisoners, be it males or females, of medical treatment and basic living conditions is not justified under any circumstances.

### **CHILDREN OF WOMEN PRISONERS**

As on 31<sup>st</sup> December, 2018 there were 1732 women prisoners with 1999 children, and within this number, 1376 women prisoners were undertrial prisoners who were accompanied by 1590 children and 355 convicted persons who were accompanied by 408 children<sup>14</sup>.

The authors find it is ironic that people and laws have an inclination towards having austere punishments for teenagers who have committed high degree crimes but no one gives a thought to the children who are already residing in the prisons, without a fault of their own.

It is natural to know that a child requires an utmost attention of his mother, but in reality, that attention persists only till a specific time in life.

In 2006, the Supreme Court issued guidelines in the RD Upadhyay vs State of AP<sup>15</sup> case to ensure that certain basic standards are observed with regard to children of women prisoners. These guidelines are aligned with international standards such as the United Nation's Rules for the Treatment of Women Prisoners (UN Bangkok Rules) and the UN Minimum Standards for Treatment of Prisoners (the Mandela Rules). However, the

<sup>12</sup> National Human Rights Commission India, "Suicide In Prison- Prevention Strategy and Implication from Human Rights and Legal Points of View" 66 (December, 2014).

<sup>13</sup> The Constitution of India, art. 21.

<sup>14</sup> National Crime Records Bureau (Ministry of Home Affairs) Government of India, "Prison Statistics India, 2018" 41 (December, 2019).

<sup>15</sup> AIR 2006 SC 1946.





implementation of this ruling leaves much to be desired.

During the hearing in 2006, the Supreme Court observed that a prison is not an appropriate dwelling to raise a child; however, it also recognized that children may have to live in jail for something that wasn't even their fault. The reason stated by the Apex Court for this observation was that it is always preferable that children are not separated from their mothers in their impressionable years, especially when no one from the immediate family is willing or able to take care of them and the court further stated that it is only till the age of six that the children should be allowed to stay with the women prisoners but not after that<sup>16</sup>.

There are guidelines in the Prison Manual, 2016 regarding the children of the women prisoners and how they are to be cared for both during their accommodation in prison and after they leave the prison when the age of six is attained. Though there are many recommendations that the Prison Authorities are bound to follow, in reality, nothing appears to be moving in a positive direction. There is a special emphasis on the diet, clothing, education, health of children of the women prisoners, but the tender lives are far from being taken care of. Poor ventilation, no separate space for mother and child to be accommodated, the child living with adult convicted prisoners due to lack of space just highlights the actual condition that the children of women prisoners have in jails. As there is no proper diet that is maintained, these children become prone to diseases early in life due to lack of immunity.

<sup>16</sup> Growing up in India Prisons: Children of Undertrials and a case of widespread neglect, *available at*: <https://scroll.in/article/808713/growing-up-in-prison->

When the child gets out of the prison, the idea of him spending the first six years of his life in a prison and the idea of not having a normal childhood like most of the other children is daunting and it also tends to affect the relationship that the child is bound to develop with his mother in later years of his life. There is already a lot of stigma attached with the child having been raised in jail, the further experiences of visiting the jail and meeting the mother too might result to be traumatizing.

The authors find it best that adequate measures should be taken to not treat a child as a prisoner and that utmost sensitivity, care and guidance is provided to the child. The environment should be such that the child should not end up feeling that he/she is in a prison. There should be provision of doctors and counselors to the child both when he is inside and outside the jail in order to reduce the chances of psychological disorders that may be caused due to traumatization. As far as the education of the child is concerned, the education cost should be borne by the prison authorities till the time the child is in prison and after that suitable contacts should be made with any NGO to promote the child's education till the time he becomes self sufficient and self reliant.

### CONCLUSION

In India, and globally too, women have always been considered to be in minority, but merely because the sex ratio varies, it doesn't give the right to anyone to treat the women lowly anywhere be it in schools, workplaces, households and last but not the least- in prisons. Women needs are a little more than

children-of-undertrials-and-a-case-of-widespread-neglect (last visited on May 27, 2020).



that of male counterparts because of obvious reasons. A woman's body needs adequate care because of the fact that it bears a baby, it bleeds every month, and it has higher chances of getting prone to anemia and auto immune diseases. And just because a woman is under trail or is convicted, doesn't deprive her of her basic necessities of life. The authors think that even though there are ample guidelines as to the treatment of women and children in prison, there is barely any implementation of the same. There should be proper inclusion of prisons' funding every year when the budgeting is done and funds should be directed towards prisons, state wise. Also, there should be proper maintenance of statistics since the latest data that is available is one and a half years old. The authors believe that when the conditions of prison are improved and the prison environment is positive and recreational, only then it contributes in reforming and making a prisoner believe of the good that he or she can do in the society.

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