
**FREE IN PRISON: FEMINIST APPROACHES TOWARDS WOMEN'S
PENAL REFORM IN INDIA**

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ABSTRACT

The Indian Justice system has ignored the gender identity of convicts whilst formulating and implementing policy related to penal reform. This is largely because of female prisoners forming a minority of inmates in India. According to the most recent survey of prisons conducted in 2015, there are 4,19,623 persons in jail in India, out of which, 17,834 (about 4.3%) are women. This shows a gradual increase in the percentage of female prisoners which was reported to be from 3.3% in 2000 (Ministry of Women and Child Development, 2018). Due to the number of men being vastly more than that of women in the prison system, there has been a general disregard to the gender-specific needs of women. Moreover, many facilities remain exclusively available to male prisoners only. With an increase in the number of female inmates, there is a need to focus on gender-specific nuances in jails and to view penal reform from a feminist lens. This paper attempts to analyse the historic and present state of female corrective facilities in India. It emphasises on the need of gender- sensitization in the criminal justice system with respect to creating more conducive facilities for reformation of female convicts. It also attempts to provide methods of improving these facilities through the philosophy of feminist theory, adoption of ideals based on the same in international conventions and their implementation in the form of policy.

BACKGROUND

In India, more than 3 lakh women were arrested for crimes under the Indian Penal Code (IPC) and Special and Local Laws (SLL) in 2016. However, the number of female prisoners have increased in the recent past in comparison to their male counterparts (Global Prison Trends, Thailand Institute of Justice, 2017). Only a proportion of arrested women are incarcerated in prison, either following their conviction or whilst they are under trial. However, it becomes extremely imperative to provide a safe space for women during their arrest, detention and imprisonment which comes from a cognizance of their gender identity. In a world where prisons

are not only viewed as a space for punishment but also reform it is important for the judicial structures to create an environment where such reform is possible. Empirical evidence shows that women have a heightened vulnerability to mental and physical abuse during arrest, questioning and in prison (Women and Detention, UNHR, 2014). Harassment comes at the hands of both-prison officials and fellow inmates. In 1987, the National Expert Committee on Women Prisoners under the chairpersonship of Justice Krishna Iyer appraised the situation of women in jails and made various recommendations. These recommendations included the creation of separate female jails and employment of female staff who are responsible for guarding those jails and having personal and intimate interactions with them. These aimed at ending gendered violence and harassment against women in jails (Ministry of Home Affairs). However, these norms have been loosely implemented in status quo. In May 2017, the Hon'ble Supreme Court noted that there was a dearth of staff in prisons across the country. Even amongst them, only 8.28% of the total staff are women which implies a scarcity of supervisory level female officers. 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 extremely problematic. The presence of women inmates necessitates gender-specific services, which should be provided by female staff (Prison Statistics in India, NCRB, 2015). Legal rights also remain a concern. Majority of women (68.02%) in prison are arrested without being made fully aware of the grounds of their arrest which is a breach of their fundamental rights as citizens of India (Bhandari, 2015).

The lack of legal knowledge among many women is a major obstacle in the improvement of women's situation. This stems from ignorance of law and misconceptions based on myths which are by product of patriarchy. International bodies, such as the United Nations, have stated that the obligation of states is not limited to passing relevant laws, but also extends to informing women about the existence of such laws, in order to enable them to seek justice and realize in practice their rights. Therefore governments must popularize laws, and explain them clearly to the public in order to reduce ignorance and break down myths that exist in the public sphere.

The National Prison Manual contains several guidelines which are supposed to ensure adequate hygiene especially for female inmates. While the prescription in the Prison Manual is to ensure one toilet and one bathing cubicle for every 10 prisoners, this is rarely implemented. There are inadequate number of bathrooms and toilets catering to a disproportionately large prison population. Women's toilets should ideally have safe entrances situated in secure areas away from male intervention. The incorrect placement and structure of toilets and bathrooms in prison increases the risk of sexual harassment/abuse of women prisoners. Moreover, women are usually made to do menial work which is clearly antithetical to the NPC.

A high majority (81.8%) of female prisoners fall in the menstruating age group of 18-50 years, which increases their need for proper sanitation facilities as well as access to adequate menstrual hygiene products. Guidelines provide that they are to be provided with sterilized sanitary napkins as per their requirement, which is also largely missing. Women are reportedly charged for sanitary napkins in some prisons or are only provided a set monthly number irrespective of need (Trivedi, 2012). This leads women to resort to using unhygienic materials such as cloth, ash, pieces of old mattresses, newspapers etc.

There are provisions that relate to temporary release of pregnant women from prisons during the time of childbirth. Casual offenders' sentences might also be commuted. The birth certificate of the child born to a woman in prison should never mention the prison as place of birth to protect them against social stigma. Mothers in postnatal stage are to be provided with special food and separate accommodation to maintain hygiene, for at least a year after childbirth.

SENSITIZATION

The prison system must be sensitized to the needs of women to allow for conducive reformation. It is thus essential that women offenders be guarded against exploitation while in prison. In a number of judgments on various aspects of prison administrations the Hon'ble Supreme Court has observed that the rights of a person must still be upheld even in incarceration and the punishment must not exceed the sentence passed by a court of law. Visits by NHRC to various prisons have revealed that many prisons do not have a legal aid cell and very few prisoners have accessed legal aid which reduces the propensity of commutation of sentences.

Inmates also suffer from mental distress whilst serving their sentence. This is compounded because of harassment and mistreatment faced particularly by women inside prison. Mental health in developing countries like India are often stigmatized or ignored altogether. Concerns 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. A total of 51 deaths of women prisoners were reported in 201520, of which 48 deaths were considered to be of natural causes and three deaths occurred due to committing suicide (Prison Statistics in India, 2015). There is a need for provisions for inspecting the mental health of inmates and providing appropriate counselling and psychotherapy or recommending appropriate institutions where they can be legally transferred.

Education of women must also be given priority inside prisons. This not only causes a dramatic change in the lifestyle and opportunities available to women once they are released from prison, but also provides avenues to women which allows them to spend their time inside prisons constructively. Skill and vocational training helps women to find employment upon release. It

significantly improves the environment inside the prison and has a positive effect on the mental health of prisoners. Financial security acts as a safety net that reduces the propensity of women to fall back into crime to make a living.

Prison systems must also provide for segregation between various groups of female prisoners. Convicted prisoners must be kept separate from non-convicted prisoners because both these groups have different needs which the justice system must prioritise. On one hand, convicted prisoners must be acclimatized to the environment which allows for conducive reformation. Non convicted prisoners have needs which largely relate to access to legal aid. Adolescents and pregnant women must also be granted their own separate spaces where their nuanced needs are catered to. In a survey conducted in a prison in Rajasthan, 80.56% women stated that there was no separate wing for convicted and unconvicted prisoners. Only 3.89% women stated that there was a separate wing for adolescents and old prisoners.

The Hon'ble Supreme Court, in 1979 has reaffirmed the rights of prisoners to maintain contact with the outside world. Inmates should be allowed to meet their families in regular intervals. An additional burden is imposed on women, as mothers, to raise their children. To that end, prisons should allow mothers to frequently interact with their children through post and regular phone calls. Women are sometimes put in prisons that are extremely far away from their homes due to the lack of female specific prisons in the country. This makes visits even more difficult. The number of phone calls and letters allowed should be increased for women. Further, women should be considered on priority for housing in open jails and lower security facilities where interaction with the outside world is much easier.

FEMINIST THEORY

The need of providing gender-sensitive mechanisms in correctional facilities for women is also argued in feminist philosophy. Women would face multiple levels of disadvantages in the absence of the mechanisms. This stems from historical oppression in the form patriarchy that is systematically oppressive to women. It's manifestations sexual harassment discrimination and exclusion which cause high levels of mental and physical trauma. This is aggravated by prisons because female inmates constitute a small minority of the prison population. Empirical proof of affirmative action on women outside prisons shows that it corrects existing unfair treatment and gives women equal opportunity in the future. (Kim and Kim, 2014). A review of affirmative action and occupational advancement of minorities and women during 1973-2003 showed that the effect of affirmative action these communities as progress into management, professional, and technical occupations since the 1970s and early 1980s (Kurtulus, 2012).

INTERNATIONAL STANDARDS

To address the lack of standards related to the specific characteristics and needs of women offenders and prisoners, in 2010, the UN General Assembly adopted the “United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures”. It was prepared by the “Women Human Rights and Gender Section” (United Nations Human Rights Office of the High Commissioner, 2014). These were termed as the ‘Bangkok Rules’. They firstly aim at preventing crimes that address root causes and risk factors related to crime and victimization through social, health, educational and justice policies. The Bangkok Rules require States to develop gender-specific diversionary measures and pretrial and sentencing alternatives to imprisonment that are sensitized to the history of victimization of women and their caretaking responsibilities.

These causes for women usually include poverty, responses to gender based violence and harassment at the workplace and otherwise. It also proposes to implement rules that reduce harsh sentences on crimes that have unfair social stigma when committed by women, like adultery. Lastly, The Bangkok Rules direct governments to provide services and programs aimed at the rehabilitation and reintegration of former women prisoners. This includes planning and implementing comprehensive pre- and post-release reintegration programs which take into account the gender-specific needs of women. Guidelines such as these have started being implemented across the world.

States like Colorado in the United States of America have mandated the provision of sanitary products to women in incarceration facilities (Paul, 2019). Focus on gender-specific sensitization in the United States increased during the 1970s and 1980s, an era marked by a substantial increase in the female prison population. In addition to vocational education, some prisons in the United States have developed relationships with local Community Colleges to form specialised programs for female inmates named PSCE (Postsecondary Correctional Education) programs. Such programs allow individuals to take credited (or non-credited) college level courses. Through funding, these programs are offered at discounted rates, or at no cost to the inmate (Vira Institute of Justice, 2014). New Zealand provides unique and gender sensitive facilities in its jails for women. . At these incarceration facilities, women are offered various prisoner assistance programs while they serve their sentences in prison. These consist of baby unit spaces for new mothers, mental and physical disability assistance, feeding and bonding facilities, cultural hobbies, and special food accommodations for dietary restrictions. While many of these activities are permission based and evaluated with a case-by-case approach, these prisons have started offering these options to women who are incarcerated in the recent years. The Australian juvenile court recognizes the need to treat young women offenders with gender specific services related to things such as therapy and vocational education.

CONCLUSION

There is a difference between legal and societal perception of events. The justice system might punish men and women equally for the same crimes but there is a monumental difference in their societal perception. Thus, a gender perspective must be considered while catering to the needs of women in the justice system in general and prisons in particular. It is clear that the needs of female prisoners in India are overlooked by government policy makers and the justice system in particular. This ignorance plagues the lives of women in prison, many of whom are undertrials. Prisons therefore, do not serve their reformatory purpose. Despite the presence of a number of progressive policies aimed at improving the condition of female prisoners, they are seldom implemented. Problems arise due to lack of female staff, unplanned and unsafe accommodation, low levels of sanitation and hygiene, insufficient access physical and mental health needs, negligible educational opportunities and often unusable skill and vocational training. This not only makes lives inside prisons traumatic but also hinders reintegration into society. As more women enter the prison system, it is imperative to make gender sensitive changes in services, processes and infrastructure to cater to their needs. Prisons must be carefully audited to enforce norms and standards, and adequate staff must be trained and employed. To improve the condition of female criminality in India, prisons must fulfill their reformatory purpose and facilitate the healthy re-integration of women in society.

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