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Rights of Women Prisoners in India: A Legal Study

BHARTI CHAUHAN¹

ABSTRACT

Women are given a respectful status in Indian Society; her role is in the society. The role of the mother is the most significant role played by a woman in her whole life. Constitution of India provides the status of equality to all women in India. Indian Constitution provides that it is the duty of the State to protect the rights of women and manage to provide prerequisites of international conventions for safeguarding the rights of women. However, the real condition is that the women in prisons are still facing an end number of problems. Even basic human rights are being ignored despite a number of directions from the judiciary in various cases and recommendations of different Committees. One of the major reasons for the ignorance of the rights of women prisoners is that women prisoners are fewer in number than male prisoners in jails in India. India is a patriarchal society; prisons are constructed according to the needs of men. The purpose of this study is to highlight the problems of women prisoners, the violation of the human rights of women prisoners, the condition of women jails, to enumerate human rights and constitutional rights of the women prisoners, and to suggest some reforms in the Prisons Act, 1894.

Keywords: Constitutional Rights, Equality, Human Rights, Prisons, Women Prisoners.

“Every man is born good, but circumstances transform him into a criminal”

- **K.T. THOMAS**

I. INTRODUCTION

A life in prison is like life in a hell. The very struggle for survival in a difficult, cruel world becomes more burden in case of woman who is facing trials and tribulations. What compels a woman to commit an offense or adopt criminal behavior without the fear that it is punishable by law is the male-dominated society, largely patriarchal social system, combined with issues of poverty, deprivation, and the frustrations of existence, the vulnerability to victimization at home and in the society. The punishment involves detention in prisons, where the conditions of living are barely basic, but much worse is that the detainee loses the right to live a life of dignity. Rejected by society, often abandoned by relatives, and contemptuously treated by authorities,

¹ Author is an Assistant Professor at BSAITM University, Faridabad, India.

these women live behind bars – lives withered, wasted and wrecked by worthlessness. Their pitiable state, their morose demeanor, the constant worries about their children and family, the uncertainties of punishment or otherwise, make them hopeless and ignorant about their own lives. During the period of imprisonment, there are moments of agony and visible shades of remorse, but never a trace of excitement, enthusiasm, or expectation. The disconcerting effects and the consequences of imprisonment – from dealing with the deviant act itself at the mental and social levels to the uncertainty or certainty of punishment, the various worries about the condition of her children and family left behind, and the stigmas she will now have to carry - are some of the issues that confront a woman when she finds herself in behind the four walls of the prison.

(A) Status of women in India

The overall development of a nation depends upon the maximum usage of people, both men, and women, but unfortunately, in India, the patriarchal system overrules, resulting in the backwardness of women in most sectors.

According to the Vedas of Indian culture, “women are worshipped as LAXMI MAA- the goddess of wealth; SARASWATI MAA- the goddess of wisdom; DURGA MAA- the goddess of power”, whereas in reality women are ill-treated by the society every now and then, the status of women in India has been having undergone many changes over the period of time.

In India, besides the factor of patriarchal structure, the legal system happens to be a major factor in dividing women on religious grounds- as every religion provides different laws in its respective personal law for the governance of property, family, and marital matters of its adherents.

“The spirit of the male, the lacunosity which perforates the structure of legally, the retrogressive elements, the lax implementation or enforcement, the gender-biased judgments, and the distinct personal law join together and form the predatory multipronged force, which prevents women from exercising their rights. This upsets the dialectics of the law by emboldening the patriarchal forces. An examination of marriage, guardianship and adoption rights, divorce, and maintenance and inheritance rights of women reflects the ambiguities and lacunae, hurting the women’s cause. Most of the judicial verdicts endorsed male chauvinism.”²

The need of the hour is to identify and implement the ways by which our country can lead towards the upliftment of condition of women. As said by the jurists, “When women move

² Salagare, Dr. Mallappa, *Status of Women’s Rights in India*, KAAV International Journal of Arts, Humanities & Social Sciences Status, <https://ssrn.com/abstract=2869007>, (2015).

forward, the family moves, the village moves and the nation moves”. It is important to note as their thought and value systems lead to the development of a good family, a good society, and ultimately a good nation. The best way of empowerment would be by making women participate in the mainstream of development. Women’s empowerment will be real and effective only when they are bestowed with income and property so that they may stand on their feet and have their own identity in front of society.

The Empowerment of Women has become one of the most important concerns of the 21st century, not only at the national level but also at the international level. Government initiatives alone would not suffice to achieve this goal of empowering women. Society must take initiatives to create a climate in which there is no gender discrimination is there, and women have full opportunities for self-decision-making and participating in the social, political, and economic life of the country with a sense of equality.³

(B) Concept of Crime and Punishment

1. Crime:

“Crime is an ever changing and complex phenomenon which changes across cultures and across time.” The concept of crime is developed by the social policies of any given time. Its concept changes with the ideologies and culture of the society, the commission of any act which amounts to crime in present-day may become a custom tomorrow.

It is difficult to define crime using a specific definition due to the changing nature of the crime. Any human conduct which is believed to be harmful to the norms of society and which is not acceptable to society is a crime.

However, many jurists have defined crime in their own ways,

- William Blackstone: Defined crime as “an act committed or omitted in violation of public law forbidding or commanding it.”⁴
- John Gillin: Defined crime as “...an act that has been shown to be actually harmful to society or that is believed to be socially harmful by a group of people that has the power to enforce its beliefs, and that places such act under the ban of positive penalties.”⁵
- Crime is defined in Halsbury’s Laws of England as “an unlawful act or default which

³ Rajeshwari, M., *A Study on Issues Challenges of Women Empowerment in India*, IOSR, Vol 17, Issue 4. Ver.I,3-19, www.iosrjournals.org, (2015).

⁴ Blackstone, William., *Commentaries on the Laws of England*, vol. 4, 17th ed, p. 5, (1830).

⁵ Gillin John., *Criminology and Penology*, 3rd edn, New York, p. 9.

is an offense against public and renders the person guilty of the act or default liable to legal punishment.”⁶

2. Punishment

India is a country which consists of large number of crimes and criminals. In India all punishments are based on the motive to give penalty for the wrongdoer. The major objective of punishing an offender is that the wrongdoer should suffer and that the rigorous punishment will create fear among others and they prevent them from committing a crime. There are different kinds of punishment in India based on the offense, such as capital punishment¹, imprisonment, life imprisonment, imprisonment with fine, fine, etc.

“Mere denunciation of crime is not enough; it must be pushed to its logical end that crime does not pay by punishing the offenders. Punishment is the redress that the commonwealth takes against an offending member.”⁷ Punishment is some sort of social censure and not necessarily involving physical pain. H Kelson in his General Theory of Law and State, described “sanction is socially organized consists in a deprivation of possession- life, freedom, or property”.⁸ According to Jeremy Bentham, “punishment is evil in the form of remedy which operates by fear.”

3. Prison System in India

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

- Nelson Mandela⁹

The concept of prison and imprisonment came into existence in the first quarter of 19th century. Traditionally prison was a place where people were kept under custody pending trial or as a punishment after conviction of a crime. Over time, it has undergone a radical change, and present-day penology accepts that the function of prisons is not only for imprisonment for punishment but also for rehabilitation, reformation, recreation, deterrence, and protection of criminal from society and its stigmas.

But unfortunately, there is not much practical application of these functions in the prisons in India. India is the world's largest democracy in more than name. “It has free elections, a multi-

⁶ Halbsbury's Laws of England, 3rd ed, p. 271.

⁷ SETHNA, M.J., SOCIETY AND THE CRIMINAL, (3rd Ed) Bombay: N.M Tripathi Pvt Ltd., 236, (1971).

⁸ FREEMAN, M.D.A., LLOYD'S INTRODUCTION TO JURISPRUDENCE, (17th Ed.), London: Sweet & Maxwell Ltd., 282, (2001).

⁹ UNODC, *Justice and Prison Reforms*, https://www.unodc.org/documents/justice-and-prison-reform/16-05081_E_rollup_Ebook.pdf.

party parliamentary system, a diverse and outspoken free press, an independent judiciary, and the country abounds with non-governmental organizations that take pride in their independence and that help to make up a lively civil society, yet if the checks and balances of democracy are supposed to curb government lawlessness, something has gone wrong in India. In major cities of the country, the prison inmates are facing atrocities by the prison administration.”¹⁰

Prison administration in India has been facing many problems for a long time, such as overcrowding, congestion, increasing population of under-trial prisoners, lack of health and hygienic facilities, insufficient food and clothing, lack of classification and correctional methods, inefficient vocational training, indifference attitude of jail staff, torture and ill-treatment, insufficient communication, etc. According to Prison Statistic India 2018¹¹, “prisons in India are overcrowded; the nationwide occupancy rate in jails in 2018 was 117.6, which becomes a major concern for the prison administration in India.” A majority of under-trial prisoners are poor. They are denied bail for want of monetary security, and thus trials take several months and, in some cases, several years. Usually, they are not provided any legal aid, live in pathetic conditions, do not have access to adequate medical care, and are likely to be tortured or exploited. Legal aid lawyers and prison officials are also unaware of the existing legal standards many times. The system fails the prisoners at every turn, and often agencies blame each other for non-performance and unaccountability”¹²

“Prison administration in India is regulated by Indian Prison Act, 1894, and every state has its separate jail manual as Prison is a state subject under Indian Constitution and is covered by item 4 under List II in Schedule VII of the Constitution of India.”

The Prisons Act of 1894 is one of the oldest pieces of legislation in India dealing with the administration of prisons in India. The time has come to unlock the colonial Indian prison system and make major changes to the centurion old Prison Act 1894, as it’s obsolete and does not go at par with modern society and age. Hence there is a need for renovation, not only of prisons but also the prisoners who shall be equipped with basic fundamental rights that the constitution provides to every citizen.¹³

II. LITERATURE REVIEW

A systematic treasure of knowledge on a particular subject or topic compiled by Scholars and

¹⁰ Prison Conditions in India, Human Rights Watch, <https://www.hrw.org/sites/default/files/reports/INDIA914.pdf>.

¹¹ Prison Statistic India 2018, NRCB, <https://ncrb.gov.in/prison-statistics-india-2018>.

¹² Commonwealth Human Rights Initiative, Prison Reforms in India, <https://www.humanrightsinitiative.org/content/prison-reforms-india>.

¹³ Bahl Shagun, *Prison Laws in India- The Forgotten Law*, (2017).

researchers over the period is known as the Literature. A literature review is the analysis of the publication on a specific selected topic. Literature review is the integral element of the thesis, research paper, and research proposal. A review the preparatory knowledge about the subject and which completes the shortcoming in knowledge of the study done can be considered a good review. The researcher has collected these literatures related to the topic, “Rights of Women Prisoners: A Socio-Legal Study” which are as follows: -

(A) Introduction

A prison is a correctional facility meant to house the individual who break the law. The main purpose of prison is the reformation of inmates whereas in reality prisons hide violence and depravity behind their close door, which is detrimental to reform the offenders. It is thus essential to recognize and fulfil the basic rights of prisoners to encourage their reformation.

Kumar (2013)¹⁴ brings out the deplorable condition of prisons in India. According to him modern day prison management in India does not take care for fundamental rights of the prisoners. The prison administration has not developed a proper food culture, the quality of food served to the prisoners is far from satisfactory, the accommodation provided is in pathetic condition and lacks in ventilation, exhausted fans, no proper arrangement of water and electricity supply. Chowdhury (2002)¹⁵ talks about the development of reformatory spirit of prison law. He has expressed his dissatisfaction over the existing prison administration in India and pleaded for a better prison management with suitable reforms necessary for the prison administration. The purpose of the prison should be reforming the prisoners rather than punishing them. The author has critically analysed the prison laws formulated at the British period and concluded that they have wrong perspective and objective and there is no focus on reforms or correctional penology.

Talking about the problems of imprisonment, it needs to be remembered that imprisonment comes with a stigma because of socio cultural issues, but the stigma is darker when it comes to women.

Sengupta (2011)¹⁶ has focused on status of women in this developing society, she says that status of women has taken an upward turn since last few decades. The Constitution of India guarantees equal opportunity and provides safeguards from exploitation and injustice. Women

¹⁴ Kumar Subhodh, *Semi-private prison management in India*, Journal of Centre for reforms, development and justice, Vol.1, No.3, 2013.

¹⁵ Chowdhury Nitai, *Indian Prison Laws and Correction of Prisoners*, Deep & Deep, New Delhi, 2002.

¹⁶ Sengupta, Paramita., *Status of Women in Developing Society*, Indian journal of Maternal and Child Health, Vol. 12(2), 2011.

are competing with men in all sectors. Women in India today enjoy better status and freedom than women in the past, despite of that, a paradoxical situation still haunts us for, even today, 'the mainstream remains very much a male stream' as Indian women suffer from many disabilities and social injustices. She suggests that transforming social discrimination against must be made a priority to improve the condition in long run. Kaushik (2010)¹⁷ in his work has talked about the deploring condition of human rights of the women in incarceration. Indian Constitution has provided many provisions for the upliftment of status of women in the Indian society, such as status of equality. However, a good fraction of women in India are benefitted with these provisions and secured very high positions in their personal and professional lives but still another fraction of women are left behind who are poor, illiterate or having lack of awareness who are unable to enjoy the rights provided to them and still struggling behind the walls of patriarchy. Earlier practices like female foeticide, child marriage, dowry, sati, repeated pregnancies, unattended child birth, wife battering, bride burning, prohibition of widow remarriage honour killing, rape, molestation, eve teasing, denial of proportion in family property etc were the major factors which resulted to lowering of status of women in Indian society. Hence, there is large gap seen between the status of men and women in the Indian society. The status of women gets worsened if she happens to be detained in prison, then she is labelled as a woman with low morals who deserves to be treated badly. The above conditions combined with the negligence of authorities on their part or their carefree attitude further contributes in worsening situation of prisons and the plight of women in such prisons.

(B) Prison System in India

The prison laws in India are the forgotten laws; Bahl (2017)¹⁸ discusses the prison laws in India that it is one of those neglected laws of this country which has lost its glory in a way that neither the authority gives importance to reform it. The author discusses the shortcomings of the prison administrations as how it treats the offenders, it must be kept in mind that even the offender is a human being even after being convicted of a crime, and he also has some basic human rights which can't be violated by any authority. The prisons in India treat the prisoners very inhumanely, they are kept in very bad living conditions and the worst happens when any prisoner is kept under solitary confinement. Talking about the approach, the author has quoted a famous quote of Mahatma Gandhi, "Hate the crime not the criminal" and said that the prisoners must be treated in prisons with the reformatory approach but not with the approach of torturing the offender to

¹⁷ KAUSHIK, A., HUMAN RIGHTS OF WOMEN PRISONERS IN INDIA, LAP Lambert Academic Publishing, (2010).

¹⁸ Bahl Shagun., *Prison Laws in India- The forgotten Law*, Ipleaders Blog, (2017).

that extent that he stops believing in humanity and further gets intimidated to do more crimes. The present-day problems in the prisons are the prison infrastructure, overcrowding and congestion, increasing proportion of under trial prisoners, inadequacy of prison staff, lack of proper care and treatment of prisoners, etc., is attracting the attention of media houses and social workers. With a growing case of such inhumane treatment of prisoners, this issue becomes a critical topic for public policy.¹⁹ Gul (2018)²⁰ this paper discusses the gap between theory and practice in terms of prisoners 'reintegration or rehabilitation through the research with focus on Pakistan. It suggests that in contrast to international norms, legal codes and theoretical objectives to ensure rehabilitative prison regimes, jails are characterized by problems including overcrowding, torture, lack of sufficient prison staff, lack of funds, basic requirement for prisoners and attitude of staff etc. Besides, obsolete prison rules which are made by the British Government, the negligence on the part of criminal justice system has contributed to the problem. This study suggests a rehabilitative prison regime and suggests ways to achieve it in a larger framework. The negative attitude of the prison staff needs to be restored by effective trainings. Programmatic intervention should be done by individual approach. Observing the prisoners' rights recognized in international norms. Kamthan (2018)²¹, talks about the gender gaps in theorising imprisonment. According to her jail is a patriarchal conception designed to give the woman her lost glory or womanhood. Prison redefines the customs of society and morality for women and acts as a tool of social control. It tries to restructure women prisoners so that they can fit back into the society where she had earlier committed the crime. She says, "the prison is essentially a patriarchal and hierarchical institution used as a tool of social control and punishment both inside and outside of the criminal justice system."

(C) Theories of Punishment

Punishment is no new concept. From the very beginning of mankind, there has been a concept of punishment existing in our society. Punishing a person for their wrongdoing is an inherent nature of mankind. Similarly, it's the duty of the state to punish the person who is going against the laws of the society. Punishment is necessary to protect the society from the evil minds. Hence it is the fundamental duty of state to protect its citizens. Shelke (2019)²², talks about the

¹⁹ Model Prison Manual for the Superintendence and Management of Prisons in India, Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, New Delhi, (2003).

²⁰ Gul, Rais. *Our Prisons Punitive or Rehabilitative? An Analysis of Theory and Practice*, Policy Perspectives, vol. 15, no. 3, 2018, pp. 67–83. JSTOR, www.jstor.org/stable/10.13169/polipers.15.3.0067, (2018).

²¹ Kamthan, Manika., *Women prisoners in India: tracing gender gaps in theorising imprisonment*. FORENSIC RESEARCH & CRIMINOLOGY INTERNATIONAL JOURNAL. 6. 10.15406/frcij.2018.06.00246, (2018).

²² Shelke Sagar. & Dharm Jyothi., "Theories of Punishment: Changing Trends in Penology", IJEAT, Vol 8 Issue 6s3, (2019).

various theories of punishment and elaborates how effective it is in modern world, it talks about the criticisms every theory had to face and what were the good sides to those theories and the author has also discussed the changes in trends in Indian Penology over the passage of time. Ahmed (2020)²³, has focused on the objective of punishment, he says the punishment is provided to remove the crime from the society and make the citizens of the society to feel safe and secure in their surroundings, punishment is way of detoxifying the impurity from the surroundings and cleaning it for the citizens, hence in this process the aim of theories must not be to hurt the offender but it should be to reform the offender and get him back to the cleaner society.

(D) Factors causing Female Criminality

According to Rath (2012)²⁴, illiteracy, dependency due to no source of income, low income of the family, lack of proper parental guidelines due to illiteracy, necessity to fulfil their parental obligations towards their children, adjustment problem in interpersonal relationship after marriage, lack of vocational training and ignorance about various beneficial schemes about the government are the contributing factors to female criminality in our country. The author has concluded that, the women offenders themselves are the victims of situational crime who commit crime to fulfil their basic needs.

Bajpai and Bajpai (2000)²⁵, says that there is a steady increase in the cases of female criminality in India. He believes that women were denied of their rights, they requested and demanded for it and when they were neglected, they have started snatching it. Women are committing crimes just to defend themselves. By committing crimes, they want to show the society that they are not weak and can take stand for themselves when nobody else does. The author has studied the various theories on female criminality and stated their shortcomings and limitations.

Pattanaik and Mishra (2001)²⁶ states that the steady emergence of female criminality is not only the concern of country like India but also other third world and developing countries are witnessing it. The major rise of female criminality has occurred due to the rise of globalisation, industrialisation, and urbanisation. Due to rise of all these women are getting the opportunity to get out of their homes and involve in professional world which is the main reason behind the

²³ Shaikh, Ahmad., "A Brief Analysis of Theories of Punishment in India", <https://ssrn.com/abstract=3561458> or <http://dx.doi.org/10.2139/ssrn.3561458>, (2020).

²⁴ Rath.J. J, *Socio Economic Condition as a contributing factor for criminality of women prisoners in Odisha*, Odisha Review December,8: 26-39, (2012).

²⁵ BAJPAI,A.,&BAJPAI,P.K.,*FEMALECRIMINALITYIN INDIA*, Jaipur:RawatPublications, (2002).

²⁶ Pattanaik, J. K., & Mishra, N. N., *Social change and female criminality in India*, Social Change, 31(3), 103-110. doi: 10.1177/004908570103100308, (2001).

increase. This situation has attracted researchers and academicians across the globe and major studies are going on this topic.

(E) Condition of Women in Prisons

Garg (2012)²⁷ the author has focused on the issue as how society recognises a reputable status to the women in India; she has a very important role to play in the society one of which is the role of a mother. Indian Constitution has provided equal status to the women in India instead of which women are facing so many problems in the prisons. Despite of various guidelines given by Supreme Court, High Courts, and recommendations by various commissions, basic fundamental rights of women are being threatened. Hence this article is about the condition of the women in prisons and the author has given some recommendations as how this problem can be eradicated. A detailed focus has been made on the various problems but issues like children of women prisoners, sanitation in prisons, and rehabilitation of women after release from prison are neglected by the author.

Parveen (2012)²⁸ has done extensive studies on the background of women committing crime and has observed that majority of the women hail from nuclear family or from the low economic background. Most of the women have committed murder due to torture by their family member or committed crime due to lack of money. She has also reported that women are leading a pathetic life inside the prison walls. Rohit (2019)²⁹, the author in this article has discussed in details regarding the problems faced by women behind the bars, he says that negligence from the higher authority is the cause of worsening the plight of women over there, he says that basic living amenities are not provided to women such as food, sanitation, health, hygiene, such unsaid privileges of women are being snatched by the authority. Also, he has focused on the growing number of deaths in prisons due to negligence of healthcare in prisons. Fili (2013)³⁰ has stated in the article that, there is a rapid growth in the number of women criminalities across the globe. As a result, there is huge growth in the studies but the authorities have not yet taken proper steps³¹ to manage the situation. Bergh (2009)³¹ the author talks about the importance of

²⁷ Garg Mukesh & Singla Nareshlata, *Rights of Women Prisoners in India: An Evaluation*, IJARMSS, (2012).

²⁸ Parveen, S., *A Study of Condition of Women Prisoners & Their Children in Eastern U.P. Jails, New Delhi*, National Commission of Women, http://ncwapps.nic.in/pdfReports/A_Study_of_condition_of_Women_Prisoners_and_Their_Children_in_Eastern_UP_Jails.pdf, (2012).

²⁹ Rohit, K., *The Plight of Female Prisoners in Indian Prisons*, THE ARTICLE, <https://thearticle.in/courtroom/plight-of-female-prisoners-one/>, (2019).

³⁰ Fili, Andriani, *Women in Prison: Victims or Resisters? Representations of Agency in Women's Prisons in Greece*, Signs, vol. 39, no. 1, 2013, pp. 1–26. JSTOR, www.jstor.org/stable/10.1086/670862, (2013).

³¹ Bergh, Brenda & Gatherer, Alex & Møller, Lars., *Women's health in prison: Urgent need for improvement in gender equity and social justice*. Bulletin of the World Health Organization. 87. 406. 10.2471/BLT.09.066928, (2009).

women's health in the prisons. Having different biological needs than that tomen, women need special attention on their health conditions whereas in reality, the authorities have neglected the basic health rights to women, main reason for that is the awareness on the part of the prisoner as well as ignorance on the part of authority as the population of women is less than that of men in prisons, hence women are considered as a minority group and are neglected their rights. Chatterjee (2018)³² talks about the quality of food provided to women in prisons. The author states that the women are provided with very poor quality of food and even the sufficient quantity is also not provided to women. Author has surveyed various prisons where it was found that the funds received for the purpose of providing food for the prisoners is somehow misplaced and the quality and quantity of the food is deteriorated.

Bhandari (2016)³³ this article explains the plight of women and their children in the jails of Rajasthan. Analysing the conditions, she has reported that average quality of living facilities, healthcare and food facilities are arranged by the authorities whereas the education of women and children are being neglected. When enquired about the same, authorities were casual about it as if there was no importance of education for the prisoners. Shanta (2016)³⁴, author throws light on the plight of the children who are inside the prison without any offence. The new born, toddlers who are having no idea about the outside world are kept in the Prisons. A large number of children reside with their mothers across the prisons in India. The author has observed prisons in Karnataka where the special cells for women are very confined with no reach of sunlight to the cell. In Bidar, the children of the prisoners are kept in damp places where survival is a very difficult. As Karnataka Director General of Police (Prisons) revealed as there were no changes in the prison manual since 1978, which seems extremely outdated. Siegel (2011)³⁵ The author observes that, the children of incarcerated parents remain inadequately focussed upon in policy, research as well as practice in India. Although there are Governmental and Non-Governmental initiatives to address some of the needs of such children, they still remain largely invisible in the child rights and social justice discourses and hence the services that are designed to reach all children. This book tries to partly address this gap by bringing forth some of the studies on children's experiences and impacts vis-à-vis parental incarceration. Sukhmani

³² Chatterjee, D. & Chatterjee, S. C., *Food in Captivity: Experiences of Women in Indian Prisons*, The Prison Journal, 98(1), pp. 40–59. doi: 10.1177/0032885517743444, (2018).

³³ Bhandari, A., *Women Prisoners and Their Dependent Children: A Study of Jaipur and Jodhpur Central Jails in Rajasthan*, Sociological Bulletin, vol. 65, no. 3, pp. 357–379. JSTOR, www.jstor.org/stable/26369541, (2016).

³⁴ Shanta Sukanya, *Growing up in Indian Prisons: Children of Under trials and case of widespread neglect*, Amnesty International India, (2016).

³⁵ SIEGEL, J.A., *DISRUPTED CHILDHOODS: CHILDREN OF WOMEN IN PRISON*. DISRUPTED CHILDHOODS: CHILDREN OF WOMEN IN PRISON, Rutgers University Press, 1-233, (2011).

(2019)³⁶ author observes that, the children of incarcerated parents remain inadequately focussed upon in policy, research as well as practice in India. Although there are Governmental and Non-Governmental initiatives to address some of the needs of such children, they still remain largely invisible in the child rights and social justice discourses and hence the services that are designed to reach all children. This book tries to partly address this gap by bringing forth some of the studies on children's experiences and impacts vis-à-vis parental incarceration. Pandey (2006)³⁷ The author talks about the concern of female criminality that instead of alarming issues of female criminality across the globe there is a lack of literature on this topic, however in recent times some people are taking interest in this issue. The author has also discussed about the children of women prisoners and suggested that if possible, children must not be allowed to stay in the prisons as it may take toll on the mental health of the child. Shivakumar (2018)³⁸ has done extensive study on the condition of women in prisons and concluded that there are no reformative steps taken in the prisons for the restoration of women back to the society once they are released from the prisons. Focus is also been made on the impact of imprisonment on women, to which author says that imprisonment has an adverse effect on the women, it destroys mental, psychical, psychological balance of any individual.

Bedi (2006)³⁹ discusses the reform of the Tihar Jail during her appointment as warden of that jail, she explains the whole system of the jail that condition of women there is unimaginably pathetic, the main reason behind such condition was that there was a proper chain of corruption going on inside the prison walls and how innocents were made to suffer due to that. She shares her whole experience as how she took efforts to the conditions and by the end of the tenure, she managed to maintain the condition. She introduced the concept of vipassana and yoga and other recreational activities in the prisons which helped the women to survive there.

(F) Protection of Rights of Women Prisoners

Nivedha & Pandey (2017)⁴⁰ the authors have discussed that reason for negligence of women's right was that women formed the minority committee in the prisons hence the authorities are negligent about them. However, constitution of India provides various provisions for protection

³⁶ SUKHRAMANI, NEELAM, ET AL., CHILDREN OF INCARCERATED PARENTS EXPERIENCES AND IMPACT, Bloomsbury, (2019).

³⁷ PANDEY, S.P & SINGH ADHWESH., WOMEN PRISONERS AND THEIR DEPENDANT CHILDREN, Serials Publication, (2006).

³⁸ Shivakumar, M. A; Lobo, S. S. et. al., *Student's Perspective on Rehabilitation and Reintegration of Female Prisoners*, THE INTERNATIONAL JOURNAL OF INDIAN PSYCHOLOGY. 6(1), 177-186, (2018).

³⁹ BEDI, K., IT'S ALWAYS POSSIBLE: ONE WOMAN'S TRANSFORMATION OF TIHAR PRISON, Honesdale, PA, Himalayan Institute Press, (2006).

⁴⁰ Nivedha, V. & Pandey, N., *Protection of Women Prisoner Rights in India- An Overview. Social Sciences and Humanities International*, An International Multidisciplinary Journal, 1(2), 14-19, (2017).

of human rights of prisoners and also many conventions are there who focus on the human rights of women prisoners. Halder (2014)⁴¹ the author discusses about the provisions under Constitution of India that are made for the protection of the rights of convicts, under trials and offenders. The article also focuses on rights guaranteed to the women prisoners under other statutes. The author also discusses that even after availability of so many provisions, majority of the women don't have the privilege to get the treatment they deserve either due to their lack of awareness or ignorance on the side of authority. Kaushik (2009)⁴² the author talks about the provisions which are available for women and then discussed that not many women are able to entitle their rights as they don't have the proper means to do so and lack of support from the society and family makes the prisoners hopeless, when they stop enquiring about their rights and accept the condition as their fate.

III. PRISON SYSTEM IN INDIA

Prison is defined as, "a place properly arranged and equipped for reception of persons who by legal processes are committed to it for safe custody while awaiting trial or for punishment."⁴³

Early prisons in India were only places of detention where a criminal was detained until trial and decision and subsequent execution. "The structure of society in ancient India was founded on the principles propagated by Manu and explained by Yajnavalkya, Kautilya and others. In Arthshastra we get a long list of crimes and penalties for that. Crimes occurring against individuals, property, institution of marriage and administration of justice were considered very heinous. The common punishment imposed for such crimes were mutilation, death and reparation. In some cases, the accused was made to take a caustic drink and was believed to be in no harm to the drink if he speaks the truth."

But now in the current phase, prison is not solely an institution for detention of offenders but a correctional institution whose main objective is to rehabilitate, correct and improve criminals. "Crime in modern advanced opinion is treated as a social disease and it favours treatment through non-punitive methods like open prison, parole, probation, community service."

Modern prisons have realized that prisoners are also human beings. Sentence can only be ordained if it does not contain the objective which is to correct the minds of the prisoners and eradicate the criminal component from his personality which in turn will act as a shield for society against crime. Prisons must focus on transforming a person from criminal to a law-

⁴¹ Halder, Debarati, *Women Prisoners and Their Rights*, SSRN: <https://ssrn.com/abstract=2496933>, (2014).

⁴² Kaushik, A. & Sharma, K., *Human Rights of Women Prisoners in India: A Case Study of Jaipur Central Prison for Women*, *Indian Journal of Gender Studies*, 16(2), pp. 253–271. doi: 10.1177/097152150901600205, (2009).

⁴³ The Oxford English Dictionary, Vol. VIII P. 1385.

abiding citizen who is competent enough to sustain himself after his release and start a new esteemed life.

(A) Concept of Prisons in India

Back in the in the year 1920, the Indian Jails Committee had unambiguously announced that the main objective and purpose of jail organization is the rehabilitation and reformation of offenders. This statement subsequently showed its effect on the procedures of different Prison Reforms Committees selected by the Central and State Governments of the worldwide impacts. "The United Nations Standard Minimum Rules for the Treatment of Prisoners, which came into action in 1955, gives the fundamental structure to such an objective." The Universal Covenant on Civil and Political Rights, put forward by United Nations in 1977, to which India is also a member country, has clearly put forward its statement that "the prison framework will include treatment of offenders the fundamental point of which will be their reformation and social rehabilitation." However, it can be seen that India even being the developed country and has formulated various acts and laws on penology, its purpose and objective of imprisonment, there is still a large gap between the strategies being set and actual practices done in the real world. There is yet a lot to go for the prison administration to become a perfect prison system of the world.

(B) Prison System in United States and England

In the United States, "prison" and "jail" allude to different levels of imprisonment; which means that jails are the county or city administered organisations which detain offenders who are awaiting trials on the local level and as well as the offenders who are convicted and are detained for more than a year. On the government level, "this terminology has been largely superseded by a more complex five-tier system implemented by the Federal Bureau of Prisons that ranges from low security "Prison Camps" to medium security "Correctional Institutions" and finally maximum security "Penitentiaries"." State run detainment institutions has the authority to detain the prisoners awaiting their trial. Apart from this more detainment centres are provided where tight security is maintained, these types of arrangements are done for accommodating the high risk offenders, for example, fear based offenders, terrorists or political offenders regarded a danger to national security and detainees from different prisons who have a background of having a problematic conduct in jail or are associated with gang affiliation. Such prisoners have their individual cells where they are kept in lockdown regularly for around 23 hours a day. Food is served through "chuck holes" in the cell entryway, and every prisoner is allotted one hour a day when he is allowed to go for outdoor exercise, and such time is permitted

individually making sure he is going alone and no one accompanies him. They are not permitted to have contact with the other prisoners and are under constant supervision of the administration with the help of CCTV Cameras.

In England and Wales, detainees are appointed security classes when they are condemned. Detainment facilities are characterised with codes relying upon the detainees they are intended to hold. The British jail system is categorised into "Open" and "Close" detainment facilities. Classifications A-C are considered "Closed" detainment facilities as detainees can't be trusted to have contact with people in general, while classification D jails are the "Open", implying that detainees with a decent record and who are allowed can be permitted to have interactions in a limited way with proper security for example, home-leave or a nominal employment. Lower-security jails are normally planned with less prohibitive actions, they are kept in small dormitories, cottages cabin like houses which are properly locked at nights and are allowed a little lenient activity at the day time to work and to perform other activities arranged by the prison authorities. In countries like the United States, where the death penalty is allowed, a few prisons are furnished with a "death row", where detainees are executed under controlled conditions.

IV. SUGGESTIONS

1. Regular and thorough inspections should be done in the prisons. Not only inspections from the prison authority but some eminent people from outside the prison administration authority must be appointed and sent for inspections. Deep and one to one inspections and interactions must be done with every women prisoner, such interactions can be done in absence of prison staff so that women can open up easily about their concerns. Such inspections must be at times surprise visits for better screening of the conditions.

2. Set up of robust grievance redressal system at the prisons would help, most of the women fear to open up about their grievances, in such cases complaint boxes must be placed in the prisons where women can put their complains and then strict actions to address such complains.

3. Police officer going for the arrest of women must go in plain dress to avoid the social stigma associated with imprisonment.

4. In case of a child born to a woman inside the prison, the place of birth must not be mentioned as "prison" in his/her birth certificate.

5. Women should be allowed to take up work during pregnancies according their choice and doctors permission.

6. Minor children must be allowed frequent overnight visits to their mother to maintain that bond between the mother and child.

7. Provisions like scholarships and incentives must be given to the children of women prisoners to encourage them to perform better in their academics and keeping them away from the negative impact of their mother's imprisonment.

8. Women should be provided separate room during their post-natal days to avoid any kind of disturbance to the newly born child.

9. Prison staff must be given proper training of handling basic medical emergencies, first aid etc. to avoid any kind of fatalities.

10. While the vocational training of the prisoners they must be made more aware the consequences of crime and adverse effect on family so that they don't think of repeating any such act after their release from prisons.

11. Staying away from their families, women are more prone to psychological depressions and further forcing them to commit crimes.

12. Children staying in the prisons must be treated normally as they would have been treated outside the prisons, they should be provided with all the facilities which they deserve at that age.

13. Stringent steps must be taken for providing legal aid to women and a strict compliance must be made that the lawyers appointed give their best to provide justice to women.

14. Trials must not be delayed, and under trials should not be kept in jails for the longer times.

15. In case of illiterate women, they must be assisted to write letters to their family, which keeps them connected to their family during the imprisonment.

16. More collaborations should be done with NGOs to increase the employment opportunities for the prisoners once they are released from jail.

17. More physical activities like exercise, yoga should be incorporated for the better health of women.

18. Women must be always kept engaged in some work which keeps their minds busy and that helps them to stay mentally fit and they generally get depressed or can think of any violence.

V. CONCLUSION

The number of women committing crime is growing day by day resulting to the greater number of prisoners being accommodated in Indian prisons. Hence the central government, respective state governments, prison authorities, and all the concerned authorities must be alarmed by this time and take stringent steps to manage the situation at hand.

First and foremost, the step to be taken should be the establishment of a greater number of prisons exclusively for women, as there are a very smaller number of women prisons to date. Traditionally, prisons were only concerned about giving punishment to the prisoners, but now the aim of punishment is to restore the offenders back into society. Hence prison authorities must keep this objective in mind and treat the prisoners on a humane basis.

Judiciary, legislature, and executive constantly play their role in improving the condition of prisons and the women inside the prisons; nor it is time for lower level authority, the prison staff who directly deal with the prisoners, to incorporate this in their minds that no person is a born criminal, the circumstances force them to take such steps, and they must treat the crime, not the criminal. Even after committing a crime or being convicted, the prisoner is still a human being. Hence he should be treated humanely. There must be more research initiatives made in this field which will help this topic to be raised and more people to get aware, and the condition is improved gradually.
