

# **Battlefield for women in prison: Challenges and Recommendations**

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**Abstract:** *There was a time when a woman's life was mainly confined to domestic work, but now she is striving in such a way that she is actively participating in every sector whether it be economic activities, social activities, production sector etc. Their participation is increasing in every sector and they are working at par with their male counterparts. But because of many factors like marital discords, family disorganization, high expectations from family and other frustrations, women are getting involved in various criminal acts at an alarming rate. Imprisonment is one of the methods of punishment which has evolved over a long time of period. Prison is reviewed as a method of reformation but in the reality it is very different from this theory. With the increase in crime rate amongst women, there has been an increase in the number of women in prison. Earlier, the prisons were male centric but now with the change of time and circumstances, special attention and changes are required to accommodate women prisoners. There are many factors that are supposed to be kept in concern like women security, health and hygiene, overcrowding etc. there are different needs of women prisoners as comparable to male prison and because of that various recommendation and changed has been made with the help of various committees, commission, working groups etc. But the reality is far away from the changes that has been recommended by the respective authorities. With the increase in the number of women prisoners, there is a growing need of understanding their rights because various problems are faced by women prisoners.*

**Key Words:** women, prisoners, rights.

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## **Purpose:**

This article seeks to study the condition of women in prison in India and inform action for improvement. An attempt has been made to build understanding on the entitlements of women in prison, the issues faced by them and the possible methods for resolution of the same.

## **Introduction:**

On the land where we worship a Goddess, we all are aware that Indian women has been the foundation stone of the family and society in general. She creates life, nurses it, guards and strengthens it. But every story has two sides. The same was in the case of women and their status. There was a time when a woman's life was mainly confined to domestic work. She was dependent upon other male members of the family.No rights were provided to her and her life was similar to cattle. But with the change in the pace of time, the condition of women also starts improving. With the development of the society, there was a development in the mindset of people at large regarding he stats of women. Various laws, changes amendments were made in Constitution, legislative Acts, and provisions for the upliftment of women. With the wake of industrialization, globalization, westernization, there was a shift in the status of women. Indian society has been passing through drastic and fundamental changes both in the structures, socio-economic and cultural spheres which not only produced a changed physical environment and a new form of economic organization but also affected the social order, solidarity, human conduct and thought traditionally women, whose role was mainly confined to the domestic area has now switched over to productively job sector<sup>3</sup>. Women are now competing with male counterparts in all the spheres with the same courage and competitiveness. But with the development there is a development in the changed views and nature of society and their needs.One of the planning report has shown that because of family disorganization, high aspiration, marital discord, frustration due to non-fulfillment of dreams, women are found to be involved in criminal activities and because of that the ration of women prisoners are increasing day by day.

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<sup>3</sup> You're Wonderful Project, *Juvenile Justice and Children of Women in Prison- an Indian Perspective*, August 16, 2018.

But as we know the cruelty of this world for women, the same is the case inside the prison. Or we can say, prison is that battlefield for women from whom she is fighting every second whether it is on mental grounds, hygienic grounds, health grounds, sanitation grounds or exploitation.

Imprisonment is regarded a method of punishment which is popular from ages. It is a method which is regarded as that method where prisoners are kept and a chance is given to them to improve their thoughts and way of living their life. Previously the prisons were mainly confined to male inmates but with the passage of time the population of female prison inmates is also increasing with a great hike and thus there should be an administration for proper living and facilities for women prisoners. But the conditions and reports are not of the view. Like outside women prisoners are facing many problems in many areas whether it is hygienic, health, sexual assault, discrimination on various basis, living or any related issues, women prisoners are facing a lot of challenges. This article is a glimpse to show the challenges that are faced by women in prisons in every sphere.

## **Crime and Women**

With the passage of time, the ratio of crimes committed by women is also increasing in a high number. In 2016, over 3 lakhs women were arrested for crimes under the Indian Penal Code (IPC) and Special and Local Laws (SLL)<sup>4</sup>. Most of the women were arrested for crime under the Prohibition Act, for cruelty against husband and his family. And this number is increasing at a high rate. As per most recent data<sup>5</sup> available from the end of 2015, there are 4,19,623 persons in jail in India. The ratio also differs from place to place. Uttar Pradesh by far has the highest number of women in prison (3,533), followed by West Bengal (1,506), Maharashtra (1,336) and Madhya Pradesh (1,322)<sup>6</sup>. The Union Territories, apart from Delhi (579), have a particularly low number of women in prison<sup>7</sup>.

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<sup>4</sup> Crime in India 2016, National Crime Records Bureau, Ministry of Home Affairs, Government of India, <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>.

<sup>5</sup> Prison statistics India 2015, National Crime Records Bureau, Ministry of Home Affairs, Government of India, <http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%2018-11-2016.pdf>.

<sup>6</sup> WOMEN IN PRISONS INDIA, Ministry of Women and Child Development, Government of India, [http://www.wcd.nic.in/sites/default/files/Prison%20Report%20Compiled\\_0.pdf](http://www.wcd.nic.in/sites/default/files/Prison%20Report%20Compiled_0.pdf).

<sup>7</sup> *Ibid.*4.

## **Human Rights of Women Prisoners**

Like every human being, even prisoners are entitled to have certain human rights as there should not be any discrimination regarding the entitlement of human rights even if a person is a prisoner. Article 21 of the Constitution of India guarantees right to life and personal liberty and it also prohibits any inhuman, cruel and degrading treatment to any human. But the reality is far different in case of prison. There is a lot of violation of human rights in prison. If a woman has committed any crime that will not lead to easement of human rights. The State is under an obligation for protecting the human rights of the prisoners as well. Women generally lead protected lives. From childhood to marriage they are protected either by their fathers or by their husbands but when a woman is in conflict with the law and order then the state must take measures to protect women. Thus, when a woman commits a crime, and when it leads to imprisonment, it becomes very difficult to cope up the prison conditions. One of the reasons can be that the basic structure of prison was designed for male inmates, thus this may be the reason women are not able to cater with the environment of the prison. Thus, gender disadvantage and discrimination is one of the most important factors that is to be kept in mind regarding the protection and for the upliftment of women in prison. With the raising concern, the Supreme Court has tried to maintain and respond on the burning issues regarding the Jail cruelty mistreatment. In a leading judgment of “*Sheela Barse v. State of Maharashtra*”<sup>8</sup>, The Hon’ able Court has given certain guidelines such as,

1. Four or five lockups should be selected reasonably in good localities where only female prisoners should be kept which should be guided by female suspects only.
2. Interrogation of female suspects should be in front of female constables only<sup>9</sup>.

## **Entitlements and Problems**

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<sup>8</sup>Sheela Barsey v. State of Maharashtra, 1983 A.I.R. 378. (India)

<sup>9</sup>*Ibid.* 6.

This part deals with the problems that are being faced by women in the prison. The *Mulla Committee* clearly defined a list of rights of prisoners which includes the right to human dignity, right to basic minimum needs such as drinking water, hygiene, medical care, clothing, bedding etc., right to communication with the outside world, right to access to law, right to meaningful and gainful employment and so on<sup>10</sup>.

### **Lack of Prison Staff**

One of the serious and major issues that is to be highlighted and which should be taken in concern is to maintain and upgrade the prison staff with respect to the gender ratio in the prison. In May, 2017, the Hon'ble Supreme Court noted that there is a huge shortage of staff in almost every jail of the country. It directed all State Governments/UTs to take necessary steps on an urgent basis to fill up these vacancies by 31st December 2017<sup>11</sup>. Another issue is to work on the scarcity of women prisoners in prison. Visits by NHRC to over 100 jails have revealed a woeful lack of staff, particularly in smaller district prisons<sup>12</sup>. Due to lack of women prison staff, the responsibility automatically shifted to male prison staff which is undesirable for the women prisoners. Thus, steps should be taken by the concerned States for the filling up of vacancies of prison staff.

### **Over-crowding in Prisons**

Over-crowding in prisons is another major issue which is to be taken up in consideration as it is necessary to provide basic human rights to every individual which includes prisoners also. It cripples every attempt to humanize living standards behind bars, and its implications are too obvious and too serious to neglect. Even after the awareness of this problem, the issue is unsolved from more than hundred years. The national average occupancy was reported at 114.4% in 2015. States/UTs such as Dadra and Nagar Haveli, Chhattisgarh and Delhi have reported the status of overcrowding in prisons as high as 276.7%, 233.9% and 226.9% respectively<sup>13</sup>. Overcrowding can lead to various hygienic issues and health problems even with minor infection can spread easily. Women did not have even the adequate sleeping arrangements

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<sup>10</sup>*Ibid.*4.

<sup>11</sup>Re - Inhuman Conditions in 1382 Prisons, W.P.(C) No.406 of 2013.

<sup>12</sup>*Ibid.*4.

<sup>13</sup>*Ibid.*6.

in jails and because of which they had to sleep on the floor. A study by BPR&D on the condition of women prisoners in Punjab reveals haunting issues. Thus, special arrangement should be taken to cope up with this issue. There seems to be a lack of water based flush type toilets in jails. In some States like Uttar Pradesh and Haryana, there was a 50 per cent shortage of such toilets. According to a report of International Committee on Red Cross (ICRC) , it has come up with a set of stringent norm to ensure that detainees are allowed equitable access to basic amenities associated with maintenance of hygiene sanitation<sup>14</sup>. It is essential to note that a large majority (81.8%) of female prisoners fall in the menstruating age group of 18-50 years, increasing their need for proper sanitation facilities as well as access to adequate menstrual hygiene products<sup>15</sup>. They are supposed to be provided with sterilized sanitary napkins as per the requirement, but the implementation is still missing. Women are reportedly charged for sanitary napkins and they get those sanitary napkins in a limited quantity irrespective of their need and not just because of the sanitary napkins are charged, most of the women don't avail this basic sanitation service and use unhygienic material like cloths, newspaper old mattress etc. Thus, strict implementation of State prison manual is required along with regular and genuine inspection.

### **Health**

The right to health includes providing healthcare that is available, accessible, acceptable and of good quality<sup>16</sup>. Due to increase of population in prison, there is a need to concern about the proper health facilities to prisoners as it one of the essential right to live a healthy life. When different prisoners are living together, there can be chances of getting in influence of the disease from their prison mates. Prisoners are known to be at a high risk for diseases like sexually transmitted infections (STIs), HIV-AIDS, hepatitis B and hepatitis C<sup>17</sup>. As comparable to men, women have different problems like menstruation, menopause and other women related

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<sup>14</sup>International Committee of the Red Cross, Water, sanitation, hygiene and habitat in prisons, ICRC, August 2005.

<sup>15</sup>*Ibid.* 6.

<sup>16</sup> UNHRC Report of the Special Rapporteur on the right to mental health (2017) 13-14, A/HRC/35/21 accessed 26 May 2018; Committee on Economic, Social and Cultural Rights, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health' (Art. 12) (11 August 2000) E/C.12/2000/4 accessed at 5 June 2018; UNHRC Report on the Health systems and the right to the highest attainable standard of health, (2008) A/HRC/7/11 accessed 26 May 2018.

<sup>17</sup>Soumyadeep Bhaumik and Rebecca J. Mathew, Health and beyond...strategies for a better India: using the "prison window" to reach disadvantaged groups in primary care, Journal of Family Medicine and Primary Care, 2015 Jul-Sep; 4(3): 315-318.

problems. Thus, it is necessary for the State Jail authorities to take in concern this point and work on it accordingly. Every State prison must provide visit of gynecologist for proper consultation and treatment of women prisoners.

### **Nutrition**

Nutrition leads to good health. Prison manual of each State provides for healthy diet and prescribe a scale diet of intake for prisoners. The prison staff should ensure that prisoners are provided with proper nutritious food and special attention is to be given to pregnant prison or lactating mother as the need of nutrition of different in those cases.

### **Other factors**

There are other factors on which the State prison authorities are supposed to make necessary efforts for the betterment and upliftment of women prisoners. Women must be given a chance to enroll certain vocational and skilling opportunities so that they can earn their livelihood once they are out of prison. It is also a well versed fact that majority of the female prisoners are uneducated and do not possess basic qualification. Thus, special steps should be taken by the State prison authorities to provide basic education to the prisoners so that they are able to possess basic education which is necessary for the betterment and upliftment of any individual. Article 39A of the Indian Constitution provides for free legal aid to the poor and weaker sections of society and ensures justice for all<sup>18</sup>. Justice A. N. Mulla Committee provides certain rights that are supposed to be provided to every individual. Thus awareness should be made to all the prisoners about their basic rights and they must be made capable enough to access those basic rights.

### **Recommendations**

As the problem discussed above certain measures could be taken by the Government as well as the jail authorities to eradicate the problems that are prevailing inside the prison. There is a huge difference in making of laws and implementation of the same. Thus, for the betterment and upliftment of women following are the recommendations: -

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<sup>18</sup>*Ibid.*6.

1. There should be proper regular and proper inspection of prison and inmates of prisoners. Records should be maintained by the State prison authorities about regarding the health condition, nutrition intake, regular body checkups.
2. If any prisoner is suffering from any virulent diseases, then separate arrangements must be made by the prison authorities so that other inmates do not catch that disease.
3. Special lectures should be organized by the authorities for women regarding the awareness of their rights legal aid.
4. An initiative must be taken by the respective Government to set up a Commission to resolve the problems that occur in the prison. That Commission should also have the authority to deal with any dispute that occurs between prison authorities and inmates, or between the inmates of prison. Speedy trial should be there for immediate relief because it is not an easy task to suffer when a prisoner is already suffering regarding a crime.
5. Separate arrangement should be made for pregnant and children of women prisoners. Special attention is supposed to be made for the children of women prisoners because children are regarded as those innocent creation of God that learn from the surrounding. If they will live in those prison condition, then that will automatically lead that child's brain as a negative spot and this might create a negative mind of that child. Thus, State authorities should provide special arrangement for the upbringing of the children of women prisoners
6. Speedy trial must be made if there is any sexual assault is committed with the women prisoner. Sexual assault is one of the major issues that are supposed to be highlighted and which need a strict action by the respective authorities.

## **Conclusion**

With the passage of time, the ratio of crimes committed by women is also increasing in a high number. Previously the prisons were mainly confined to male inmates but with the passage of time the population of female prison inmates is also increasing with a great hike and thus, there should be an administration for proper living and facilities for women prisoners. There is a lot of violation of human rights in prison. The *Mulla Committee* clearly defined a list of rights of prisoners which includes the right to human dignity, right to basic minimum needs such as drinking water, hygiene, medical care, clothing, bedding etc., right

to communication with the outside world, right to access to law, right to meaningful and gainful employment and so on.

This study has been an attempt to build understanding on the areas for improvement within the prison system. The reader will likely agree that there is a definitive need to reform the largely male-centric prison system so as to make it effective to house and reform women prisoners. This paper will also be helpful for the Policy makers and administrators for taking decisions on prison reform.