

Position of Female Prisoners in India: A Critical Analysis

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Abstract

The primary reason for this research paper is to highlight the issues of the female prisoners, looking behind the bars and disclose all of the rights that are protected for women in prison, as well as the reasons why women commit crimes. Indian culture gives a good status to the females. She contributes significantly to the society. She has a significant role to play as a mother. Women in India enjoy equality under the Constitution of India. The development in prison populaces is an overall peculiarity, and inside the general development rate, numerous nations are seeing a lopsided pace of increment among females. Notwithstanding contrasts in culture and assets, females wherever deal with comparable issues in jail frameworks, which have been planned basically by and for men. Abuse of the sexual kind, a lack of appropriate medical care, the death of children, sexual assault, domestic violence, and other forms of physical and mental harm are all examples of these. The issue only arises when the poor and illiterate female enters the prison, where they frequently face physical and mental harassment from staff members and other prisoners. Custodial rape of women in prison by staff members is the most severe form of incarceration-related violence. The general treatment of prisoners is the subject of numerous international treaties and conventions. Indian Constitution awards equivalent privileges to female, prisoner freedoms and captured individual freedoms under the different unique arrangements for the consideration, government assistance and advancement of women and youngsters. These include the fundamental rights outlined in Part III, as well as the Directive Principles outlined in Part IV and Articles 14, 15 (3), 21, and 22. In addition, the Indian Evidence Act of 1872, the Prisoners Act of 1984, the Indian Penal Code, and the Criminal Procedure Code of 1973 have all been enacted to safeguard women in prison from violence. Additionally, this topic has been the subject of comprehensive committee reports, such as the Justice Krishna Iyer Committee on Women in Prison (1986-87) and the Justice Mulla Committee Report on Prison Reforms (1982-1983). This Committee also examined the recommendations made by an expert Committee on "Women Prisoners" constituted by the Government in 1986-87 under the Chairmanship of Justice

Krishna Iyer, former Chief Justice of the Supreme Court of India. This Committee had made a number of very useful recommendations for women prisoners and suggested a National Policy for Custodial Justice for Women. Both reports include suggestions for some welcome modifications to the Prisons Act of 1894.

The Indian judiciary has recently issued directives for incarcerated mothers and pregnant women. In the landmark 2006 case of R. D. Upadhyay v. State of AP and ORS, the Supreme Court of India [AIR 2006 SC 1946] directed the federal government and states to take various measures to care for pregnant inmates and dependent children held in jails across the nation. Various guidelines and orders were issued by the Supreme Court, addressing a wide range of issues pertaining to incarcerated mothers and their children. It was held that a kid in prison with his mom will be qualified for food, cover, clinical consideration, dress, training and sporting offices as an issue of right. the prison manual and/or any other pertinent rules, regulations, instructions, etc. in accordance with the judgment were required to be appropriately amended within three months in order to comply with the instructions given. The current study aims to identify the main issues affecting women in prison and their dependent children while they are there, as well as to gather information and suggestions for improving these issues. Further the point is to help regulation and policymakers in outlining of approaches based on comprehension of ground reality.

Keywords: Women, Imprisonment, Prisoners, Social Exclusion, Patriarchy, Criminal, Crime

Introduction

Women in Indian society are regarded as Goddesses, but their status has fluctuated throughout history and contemporary society. In ancient India, women held a high social status, but as time went on and attitudes toward women changed, so did their status. During the Vedic period—also known as our history's golden age - women enjoyed good status. Women had higher status than men, earned respect and honor, and had equal opportunities for social, intellectual, and moral growth. They had complete discretion over their life choices. The Mahabharata also states that "the one who did not have a wife was not allowed to do Yagya.". However, during the Vedic period, the status of women started to deteriorate and several tragedies occurred in Indian society, such as the Sati system, child marriage, restrictions on widow remarriage, and so forth, which diminished the value of women. Manu has also viewed women as inferior to men and as mere objects of the home. Women's status

remained unchanged until the Mughal era, but when the British era got under way, reformers attempted to raise women's status by addressing all of the new social issues and addressing their own. In order to elevate women's status following independence, numerous constitutional rights were granted to them. Women now have all rights in all areas of life. However, many of these rights, particularly for poor and illiterate individuals, are only recognized on paper due to widespread corruption, social and traditional norms, and inadequate law enforcement. Women seem to have a variety of problems in society and in their households despite possessing rights.

The structure of the whole system changed socially, culturally and economically as a result of industrialization, modernization and urbanization (change processes) of society. In the past, women were the backbone of the family. She is considered inferior to men everywhere. Social stability was lost as a result of industrialization and modernization, which caused a number of new social problems such as family breakdown, relationships, increased frustration and inability to adapt to the environment. All this encourages women to engage in criminal activities and become criminals. Women who commit crimes are punished with imprisonment. The prison system functions as a welfare organization for the rehabilitation of female prisoners. Indian culture experienced extraordinary and decisive changes in design, economic and social circles, which not only created a changed real atmosphere and a different kind of monetary union, but also affected social aspirations, confidence, directness of people and generally the thinking of women, whose work was mainly limited to the domestic sphere. With the field has now usefully become a field of work. Along with her male counterparts, she is found to be actively participating in the professional sphere. The number of women participating in economic, political, and social activities has increased significantly. However, in today's society, women are found to be more likely to engage in criminal activity due to family disorganization, marital conflict, high aspiration levels, frustration due to lack of fulfillment, stress, and inability to cope and change. Women make up a small percentage of prisoners, but they are a minority that is growing disproportionately fast. In predominantly male prison systems, their needs and rights are often not met. A violation of the law is referred to as a crime as well as an offense or criminal offense. The individual as well as the community, society, and the state are harmed by crime. The sinful act of doing something wrong, whether intentionally or unintentionally, is called a crime. The legal and social perspectives of crime exist. The act of breaking the law or a legal code is what constitutes a crime, according to the law. Women make up a small percentage of

prisoners, but they are a minority that is growing disproportionately fast. In predominantly male prison systems, their needs and rights are often not met.

Traditionally, women were the bearers of the family, but with the advent of industrialization, modernization, and urbanization (processes of change) in society, the structure of the entire system changed socially, culturally, and economically. Women now participate in working lives alongside men. Indian society is a patriarchal society. Women are subjugated and hurt by men at work and at home. She is treated lower than men everywhere. Industrialization and modernization have taken social stability away from society and created some new problems in society, such as becoming criminals and criminals. The conditions of female prisoners in India have been a matter of concern for a long time. The Indian prison system has faced criticism for its poor conditions, inadequate facilities, and overcrowding. Female prisoners face additional challenges such as sexual abuse, lack of access to healthcare, and poor hygiene. This research paper aims to provide an overview of the conditions of female prisoners in India and the steps taken by the government and non-governmental organizations to improve their situation. The conditions of female prisoners in India are often deplorable. They are confined to small, poorly ventilated cells with inadequate lighting and no access to natural light. In many cases, they lack basic hygiene facilities such as clean drinking water, sanitation, and personal hygiene products. Female prisoners are also subject to sexual abuse and exploitation by prison staff and other inmates. Access to healthcare is another significant issue for female prisoners in India. The prison healthcare system is underfunded and understaffed, and prisoners often have to wait for long periods to receive medical attention. Mental health care is also limited, and there is a lack of trained professionals to provide support and counseling to prisoners. The conditions of female prisoners in India are a matter of concern, and much needs to be done to improve their situation. Overcrowding, poor hygiene, sexual abuse, and inadequate healthcare are some of the significant challenges faced by female prisoners in India. However, the government and non-governmental organizations have taken steps to address these issues and improve the conditions of female prisoners. More resources and support are needed to ensure that female prisoners in India are treated humanely and with dignity.

Women and Patriarchy

A social system in which men predominate in positions of political leadership, moral authority, social privilege, and property control is referred to as patriarchy. Patriarchy can

manifest itself in a variety of criminal practices that disproportionately affect women. First and foremost, patriarchal attitudes that view women as inferior and subordinate to men are the root cause of crimes. “She is equated with Goddesses but is simultaneously raped in the lonely lanes of Gurgaon. She is expected to follow a certain code of conduct according to which she is meant to be feminine, submissive, and motherly. This is nothing but just the stereotyping of women¹”. A lack of justice for women is caused by the fact that these crimes are frequently not reported and are not adequately prosecuted. Second, the criminal justice system frequently imposes harsher penalties and judgments on women. This can be seen in cases where women are punished for standing up to partners who are abusive or when women who commit the same crimes as men are given longer sentences or harsher penalties. The social relationships of power between men and women, women and men, and men and men are at the heart of patriarchy. The issue is more severe in rural areas, where people live in poverty, illiteracy, and ignorance. Gender inequality is stark in Indian society. When it comes to female offenders and prisoners, this dichotomy is at its most glaring. In such conditions on the off chance that any lady perpetrates a wrongdoing, she is viewed as unusual and oddball for the general public. She is never accepted back into society, even if her crime is not proven. The fact that women's and men's criminal activity is viewed separately is extremely problematic. Women are not expected to commit crimes. She is supposed either to surrender to conditions or on the other hand on the off chance that for any reason she carries out a wrongdoing, questions are raised on her womanhood. The majority of families do not support, appreciate, or accept a woman's decision to be self-sufficient. Situations like these give women a platform from which they are more likely to leave or commit a crime, which encourages women to rebel. Women who come into contact with the law should be seen as a significant challenge because of the impact they have on family life and society as a whole.

Causes of Crime

“Female crime is a main indicator to measure a community’s moral standards. Because compared with male crime, the number and proportion of female crime is low, scholars and the judiciaries were not concerned about female crime for a long time. But in recent years, the rapid growth of female crime and the emergence of the new features had to be given extensive attention.” However, it is troubling to observe that women's accomplishments are

¹ Women prisoners in India: tracing gender gaps in theorising imprisonment *available at:* <https://medcraveonline.com/FRCIJ/women-prisoners-in-india-tracing-gender-gaps-in-theorising-imprisonment.html> (Last Visited on 31/05/2013)

also expanding into criminal activity in India's social, cultural, economic, and political context. As the number of crimes committed against women rises, so does the number of female criminals in India. The issue has reached such an alarming level that all scholars who are concerned about social responsibility have been forced to concentrate on the root cause of the growing number of female criminals. The stability of marriage, families, and social development have been severely impacted by female crime. Others commit crimes out of rage, fear, or impulsiveness. It is believed that unusual circumstances lead women to commit crimes. Consider the organizational, biological, psychological, and cultural imperative as active contributors to the problem as a whole. Some of the main reasons why female criminals are committing crime are as follows:

Illiteracy & low education	social influence & competitiveness
Psychological cause	family & marriage problem
Mental health	un-employed

Types of Crime

In most cases, crimes committed by women differ from those committed by men. The method, weapon, and victim selection, in addition to the nature and consequences of the crime, illustrate the differences. It's hard to ignore the fact that crimes committed by women tend to be more emotional than those committed by men. The various roles that men and women play in the commission of crime have received a lot of consideration. The crimes which are most likely to commit by women are as follows:

Theft	Prostitution and Sex Delinquency
Child Marriage	Dowry Harassment

Effect of female being a Prisoner on their Family & Society

The prime reason of imprisonment (or any form of disposal) is to punish the offender. The punishment of the offender is the primary objective of any form of punishment, including imprisonment. However, a prison sentence can also have punitive effects on families outside of prison due to the practical, financial, social, and emotional effects of imprisonment. The "innocent victims" of crime (and punishment) are frequently referred to as prisoners' families, particularly their children. Because the difficulties they faced were not immediately apparent, prisoners' families were also referred to as the "hidden" or "invisible" victims of punishment

or crime for a considerable amount of time. The impact of imprisonment is different for each family because each family is unique—including who is considered to be a "family." Families experience profound misery even with the impermanent loss of a friend or family member from the family home or potentially day to day life: For instance, families miss out on celebrating special occasions like birthdays and holidays, as well as engaging in routine family activities like eating together when any member of the family is arrested for committing a crime. Especially, when a Female does a criminal offence and goes to prison it has a very major impact on the family and her children. The love, care and affection that is required is lost and missed out and in some scenarios children and family are negatively influenced by the act of the woman in their family and start living the lifestyle of them just to erase the void of female prisoner. The Imprisonment of parents or mothers can prompt various hardships for their children. In particular, parents' imprisonment influences their kid's exhibition in schools/universities. It additionally debilitates their emotional wellness (they might notice dozing and eating issues, misery, or withdrawal), and may make conduct changes (hyperactivity, forcefulness, or taking off). These mental and conduct changes additionally rely upon the circumstance of the family. Children may also engage in behaviours that are against social norms, such as dishonesty or criminal activity. When children are exposed to their parent or parents' imprisonment at a young age, it can have an impact on their development and lead to a number of issues, such as substance abuse or mental health issues. Female prisoners face double jeopardy, with the family and society imposing the punishment of neglecting them for the same crime they have gone through the punishment. Society views them as monsters and unacceptable individuals. Every offense entails the appropriate punishment. They are given a chance of redemption, but it is hard for them to get back to their normal lives once they are released. Female prisoners suffer more in the real world than in prison because people are orthodox and have outdated ideas. We can, for the time, understand how hard it is for society to accept them; however, when the female prisoners' families don't treat them well, they break down and suffer more. Because of the negative impact they will have on the other members and children, families discourage female comebacks. In this modern world, female prisoners have a harsh and uncanny impact on their families and society.

Prison and its Problems

Women who typically live safe lives: They are shielded from harm by her father when they are young and by her husband when they marry. The women are cut off from their friends and family in prison. Additionally, the majority of the time, even their close friends and family reject them, which causes them to feel depressed, guilty, and in pain. Generally, a large portion of the jail inmates were male, and the jail climate is in this way formed the requirements of male and doesn't take care of the unique necessities of Female prisoners. The disadvantage and discrimination based on gender get worse while they are in prison and get worse when they get out. Women who are in prison face two disadvantages. Female prisoners every now and again become the survivors of physical and sexual abuse by the prison authority themselves. Male staff members occasionally conduct frisk searches on female inmates. If they don't listen, prison staff have sometimes endorsed and supported verbal and physical abuse on female prisoners, "Kiran Bedi also has expressed that women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self-respect they reached in the prison.²" In prison, Female prisoners frequently experience physical and sexual violence from both prison staff and other inmates. There is currently a lack of strict compliance with the provisions for addressing complaints and ensuring women's safety in prison. Prison facilities are a protected world, and women specifically actually must keep in touch with their informal community outside jail to guarantee a smooth change after release. Even though women are not allowed more letters, phone calls, and visits, more needs to be done to help them keep in touch and overcome the social stigma that women prisoners face. Various problems that are faced by the females in the prison in there day to day reformative period are as follows:

- Overcrowding
- Hygiene & Sanitation
- Health
- Nutrition
- Education
- Skills & Vocational Training
- Violence
- Contact with outside world
- Children

² Parmesh Dangwal: I dare! Kiran Bedi A Biography, USB Publishers' Distributors Ltd, New Delhi, 1995

- Re-integration in society after release
- Death in jails
- Prison Inmates

Various Constitutional and other legal provisions are there for protection of prisoners

As it is common knowledge, Indian society is patriarchal and dominated by men; women, on the other hand, have long been regarded as subordinate to men. She is supposed to be dependent on men from the time she was born until her death, starting with her father, moving on to her brother, her husband, and then her son. Women in India enjoy equality under the Constitution of India. In addition, it obligates the state to uphold international conventions pertaining to women's rights and to safeguard women's rights. In any case, actually ladies in detainment facilities are confronting various issues. Yes, women in prison are confined and ignored by society; even their most fundamental human rights are violated on a daily basis. The country gained independence in 1950 and enacted the Constitution, which is the supreme law of the land and is written. The Constitution of India ensures a few arrangements for the insurance of resident of India. It gives essential basic liberties to security of individuals of India, and ensures a few rights. The Constitution of India ensures balance to people, different regulations have been sanctioned to safeguard and enable females.

According to the State List in the Seventh Schedule of the Indian Constitution, all issues pertaining to prisoners held in correctional facilities, borstals, and other similar institutions come under the domain of Indian constitution. According to Article 14 of the Indian Constitution, arrangements for the use of prisons and other institutions with other States fall under the purview of State Governments. Within the boundaries of India, neither equality before the law nor equal legal protection shall be denied by the state. In addition, Constitution of India gives different arrangements however can't straightforwardly be called as detainee's privileges yet might be applicable. Among them are Article 20 (1) and (2), Article 21, and Article 22 (4) to (7) are vital. For prisoners, there must be some restrictions; there is no absolute right. It is possible to deny these rights. However, they still appear to be human. Thus, as an individual's rights likewise must be given. They can be denied from their opportunity of development. The concepts of personal liberty and the right to life are broader. "Prisoners in India are governed under some Laws and Regulations which are as follows:

1. Indian Penal Code, 1860
2. The Prison Act, 1894
3. The Prisoner's Act, 1900
4. The Indian Evidence Act, 1862
5. Code of Criminal Procedure, 1973
6. The Identification of Prisoners Act, 1920
7. The Transfer of Prisoners Act, 1950
8. The Representation of People Act, 1951
9. The Juvenile Justice (Care & Protection) Act, 2000
10. The Prisoners (Attendance in Courts) Act, 1955
11. The Probation of Offenders Act, 1958
12. Model Prison Manual, 2003
13. Model Prison Manual, 2016

From time-to-time Government of India had also established various Committees, Commissions and Working Groups to study and suggests improvements related to prisons. Some of these includes:

1. All India Jail Manual Committee, 1957
2. Working Group on Prisons, 1972
3. All India Prison Reforms Committee, 1980-83 (Mulla Committee)
4. All India Group on prison Administration, Security and Discipline, 1986 (R.K. Kapoor Committee)
5. National Expert Committee on Women Prisoners, 1987 (Justice Krishna Iyer Committee)
6. National Human Rights Commission

Constitution is the Supreme law of the land that everyone must follow in a vote-based set-up. In order to be valid under the Constitution, all laws must adhere to its provisions.” The Preamble outlines the constitution's humane tone and envisions, among other things, justice, equality, and individual dignity. It was decided in *Sunil Batra v. Delhi Administration*³ that a writ of habeas corpus can be issued to protect prisoners from cruel and inhuman treatment.

³ *Sunil Batra v. Delhi Administration*, 1980 SCR (2) 557

According to J Krishan Iyer, the writ power of the Court can and should run to rescue a prisoner whenever the Constitution's or other laws' rights are violated. The convicts are not by simple explanation of their conviction denied of all the crucial freedoms which they in any case have. Therefore, unless his liberty has been restricted by the constitution, a prisoner is entitled to all of his fundamental rights. Prisoners have many other rights some of which are as follows:

- Prisoners Right to Basic Need
- Prisoners Right to Human Treatment
- Prisoners Right to Have Information about Rights
- Right to Evoke the Writ of Habeas Corpus against Prison Authorities for Excesses
- Prisoners Right against Fellow Prisoners
- Prisoners Right to Work
- Prisoners Right to Reformative Programs
- Prisoners Right to Pre Natal and Post Natal Care

Methods of Resolutions

The reality of a prison is very different, despite the fact that there are a number of written provisions for the welfare of women in prison. The target of reorganization is much of the time neglected for discipline and inappropriate viciousness. The prison system will greatly benefit from the full implementation of existing provisions and the adoption of novel approaches. The meaning of the word "prison" is not "to use sudden force" or "to cage." The prison is a Reformative Home. Prison is a secure location where criminals who have broken the law are kept while awaiting trial or punishment. At first, it was just a place where criminals are held for trials and final punishment, but it became an intermediate point where imprisonment was seen as a separate entity. Lord Macaulay in his book "Minutes of 1835" said that - "Imprisonment is the discipline to which we should mainly trust". He was the one who came up with the idea for these rules and regulations, whose primary goal was to get convicted criminals off the streets. A few proposals in such manner are point by point beneath:

- Legal Aid
- Improvement of Health & Nutrition

- Special procedure for arrest of Women
- Robust grievance redressal system
- Regular & Thorough Inspection of Prisons
- Pregnancy & Childbirth in Prison
- Better Living Arrangements, Education, Vocational Training & Skilling Facilities

Conclusion

Both crime against women and crime by women a serious problem which puts destructive impacts on our general public. Therefore, the society, policymakers, and law enforcement authorities must make sincere efforts to prevent women from becoming "victims" and "criminals." For the advancement of the general public, assurance of ladies is extremely fundamental. Women's roles in crime and the impact of crime on their lives have both been the subject of numerous studies. However, women's crimes have not received as much attention as crimes against women. Women in prison frequently receive little attention because women commit fewer crimes than men, and as a result, their rights are frequently ignored. the nature of women's crimes, the punishments they received for them, and the prison system's existence from ancient times to the pre-independence era and now. Women's crimes were viewed from a moral perspective in ancient times. Women were expected to adhere to strict moral standards, and those who broke them were punished severely. Punishment was given a lot of weight in ancient criminal law because, according to Manu, it was the only danda that controlled human behavior and allowed people to live happily in society. When it comes to how women are punished for crimes, there was a general rule that they should get less punishment. When a male offender receives the death penalty, women receive the excision of a limb. In the case of all offenses, women receive half of the money fined for a male offender. As a result, women who committed crimes were subjected to physical punishments such as being banished, having their nose, ears, or limbs cut off, being whipped, or drowning in water. Women who broke the law were also considered to be breaking social norms as well as the criminal code. Imprisonment was not a standard type of discipline in an old India. Despite the fact that prisons existed in the past, little is known about the length of prison sentences. In order to uniformly regulate jail administration, they enacted the Prison Act in 1894. It has been determined from a review of the reports of various committees and commissions established by the Indian government from time to time, such as the All India Jail Manual Committee from 1957 to 1959, the Mulla Committee from 1980

to 1983, the National Expert Committee on Women Prisoners from 1986 to 1987, the 135th Report of the Law Commission on "Women in Custody" from 1989, and the Parliament Committee on Empowerment of Women from 2001 to 2002, that all of these committees examined the conditions of women Justice Krishna Iyer, who served as chairman of the National Expert Committee on Women Prisoners in 1986, said the following about the conditions that women in prison faced at the time: The tragic testimony of judicial futility, statutory impotence, and implementation calamity is the presence of women in custody.