

**HUMAN RIGHTS OF WOMEN PRISONERS AND
THEIR CHILDREN: A SOCIO-LEGAL STUDY
IN DELHI AND HARYANA**

**THESIS SUBMITTED TO THE UNIVERSITY OF DELHI
FOR THE AWARD OF THE DEGREE OF
DOCTOR OF PHILOSOPHY**

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SEPTEMBER, 2017

CHAPTER 7

SUMMATIONS AND SUGGESTIONS

7.1 Summation

The combination of crime and women has always been looked down upon. Whether it is crime against women or crime committed by women, both the categories raise serious concerns. And although the former has received a lot of attention the latter has been a neglected topic for a long time. The 'fairer' sex has never got the fair share in the society. In a country like India where women are socially backward and financially dependent criminality creeps in easily. No doubt they are criminals but their background is equally important to show what led them to commit these crimes. Small number of women in prisons for sure supports the fact that the element of criminality is very less in women and external pressures are more responsible for their criminal behavior.

One should not forget that women are an important connecting chord in the family. She might be dependent financially on others but the family, especially children, is completely dependent upon the lady. She is the social thread which fulfills the emotional and psychological needs of her family. When women are forced to take their children along with them in prisons it is a worrisome situation the future generation is exposed to the prison environment and the people therein. So one can imagine the future of such children and homes where mothers are sent to prison. Time has come when the authorities took serious note of the matter and bring about a total change in the approach towards women prisoners. As human rights are the basic rights of every individual against the state or any other public authority as a member of the human family irrespective of any other consideration. Thus every individual including a woman of the society has the inherent right to be treated with dignity in all situations including arrest, in custody by the police and all through the term of his/her sentence.

The researcher reviewed several aspects related to this matter in her study and that brought a sea change in her understanding of crime and women prisoners.

The researcher first of all analysed the nature of crime and punishment in India. It was found that prisons are an ancient feature in India. They were very much here as inseparable part of the law enforcement system. However sentencing of subjects was not done very often. The notion of *danda* ruled. Like any other civilization crime was equated with sin and had more moral element attached to it. However lesser punishment was awarded to women in those times. As they were treated as violators of social morals they often received shameful treatment like cutting of nose and ears, shaving of head etc. whipping and banishment were other favorite punishment for women. But imprisonment was not prevalent as a sentence. Prisons, in whatever form they existed, were to keep the undertrials or were filled with people awaiting death sentence. A study of *Kautilya* and *Asoka* reveals that background or status of an accused was an important factor in deciding the kind of punishment one would receive. With the coming of Buddhism element of care was introduced for the prisoners. With coming of Muslim Era things changed drastically and they had the most severe of punishments for criminals. There were no trials and jails were flooded with enemies of State. Prison torture was prevalent and death sentences became a common punishment. Women prisoners were whipped and paraded naked. Pregnant women were given certain concessions and were spared till the delivery of the child. The whole concept of justice changed and heavy fines were imposed on the subjects. With advent of British and introduction of new penal system things changed drastically for criminals. There was no distinction in terms of punishment for women. Sentencing was the favorite punishment. Deportation was also a form of punishment where convicts were banished for life. As the policies were discriminatory the prison conditions were deplorable. Punishments during prisonisation were also promoted. Prison labour was introduced which was often unpaid. As there was no separation of females from males that further compromised with the safety and security of women in prison. They were abused, exploited, and also used for prison labour. There is no clear evidence as to what happened with the children of women prisoners in any of the era. Though like women we see there were certain relaxations when children committed crimes like they were pardoned, their crimes excused or fines were condoned but there is nothing to show what the status of children of prisoners was.

Subsequently in 18th century reforms were introduced by changing the penal policies in colonial India. Later in year 1894 the Prison Act was introduced after series of commissions. For the first time women prisoners were separated from male counterparts. Matrons were appointed to take care of the females. And the concept of Medical Officer in Jails was also introduced which has been retained till date. Also in India since the All India Report of 1919-20, the Reckless Report of 1951 followed by the Mullah Committee Report of 1983, Report of National Expert Committee on Women Prisoners, 1987 to the latest of that of Malimath Committee Report, 2003 and Parliament Committee on Empowerment of Women 2001-2002, all have suggested drastic changes in the prisons in India. These include tackling issues of Human rights of women prisoners, issues of overcrowding, establishment of jails, review of rules and regulation and separation of juvenile delinquents and protection of children of women prisoners.

Out of all, the 1987 Report chaired by Justice Krishna Iyer strongly recommended specialized structured changes to meet the special needs and disabilities of women in Criminal Correctional Process. He remarked “Women in custody are tragic testimony of judicial futility, statutory impotency and implementation calamity”. What the Chairman believed at time can be seen from the statement. The judiciary lacked in providing the living conditions to women, the laws were insufficient and inadequate to take care of women prisoners and there was no implementation of whatever rules were present for these women. The famous Malimath Committee appointed by the Indian Government in 2003 was to bring about the sea change in the prison administration. Complaining of the issues faced by the court and the society and the victims, the report failed to take cognizance of the matters related to the most vulnerable group of the society.

Apart from the Prison Act, 1894, several procedures have been discussed under the constitution and other criminal laws of the country. An in depth study showed that the Constitution provides a blanket protection to the rights of prisoners under Fundamental Rights and directive Principles of state Policy. The Criminal Procedure Code also provides a full fledged system of trial to ensure that justice is not only done but it should seem to be done. Fair procedures of search, investigation, principles of double jeopardy

and compounding of offences are some of the features which bring relief to offenders and convicts who are either innocent or are mere victims of their circumstances and might have committed the crime after succumbing to disturbed social lives or economic constraints. Many of such rights have been vehemently repeated, time and again by the judiciary and were brought within the ambit of human rights under Article 14 and Article 21. From *A. K Gopalan*¹ to *Maneka Gandhi*² the Honourable Supreme Court explained the realm of the word *procedure established by law* under article 21. The catena of cases thereafter from *Sunil Batra*³ to *Zahira Habibullah Sheikh*⁴ the courts have given all kinds of rights, except the ones that are curtailed by sentence, to the prisoners for the simple reason that they are in prison due to punishment and not for punishment.⁵ The researcher found that the current approach of the courts is aimed at an overall development of the prison system in India. through the latest cases the courts have expressed concern for non implementation of the guidelines laid down in previous cases and the existing plight of prisoners.⁶ In *Upadhyaya's Case*⁷ Supreme Court laid down the guidelines for the government to provide pre-natal and post-natal facilities and provisions for children of women prisoners.

The researcher also found some efforts have been put in by the Law Commission towards the plight of Women prisoners. In its 135th report on Women in Custody, 1989, the Law Commission suggested on the lines of Justice Iyer Committee that women prisoners are always ignored and their human rights are put at stake. Changes were suggested in arresting procedures. Doing away with sureties for Bail provisions, suspension of sentence for pregnant convicts till time of delivery, medical examination by female doctor on admission and right to counsel were some of the suggestions. 259th report of Law Commission on Early Childhood Developments and Entitlements, 2015 discusses the need for basic facilities for children but it has failed to make a special

¹ “1950 AIR 27, 1950 SCR 88.”

² “1978 SCR (2) 621.”

³ “AIR 1978 SC 1675.”

⁴ “AIR 2006 SC 1367.”

⁵ “Jon Vagg, *Prison System- A Comparative Study of Accountability, in England, France, Germany and the Netherlands* (Clarendon Press, Oxford. 1994).”

⁶ “Re-Inhuman Conditions In 1382 Prisons decided As on 5 February, 2016. See Also *Dilip K. Basu v State of West Bengal & Ors* decided on 24th February, 2015.”

⁷ “AIR 2006 S.C. 1946.”

mention of children of prisoners who stay in jail up till 6 years of age. This is surprising as the report acknowledges that the first six years of the child are most important for brain development.

The concept of human rights of women prisoners and their children gains momentum from the fact that many international instruments have discussed and deliberated the need for protection of human rights of women prisoners and how their children suffer at the hands of penal institutions. So there is a further need to protect the interests of these women and children. The UDHR was the first formal document that universally protects motherhood and childhood without any discrimination. To add to it UDHR prohibits illegal arrests and detention. However it was not until 1955 that prisoners became the focal point of any discussion of human rights discussion as it was believed that prisoners are 'less of humans' and therefore it cannot be imagined that they have some sort of rights.

Besides these basic human rights instruments, "the first ever initiative at international level to protect the rights of the prisoners was taken with the adoption of the Standard Minimum Rules for the Treatment of prisoners, in 1955 by the United Nations (SMR)". These Rules provide the guidance to the member states as how to treat the prisoners. But these Standard Minimum Rules 1955 are not exhaustive and contain few provisions to protect the gender-specific rights of women prisoners, for instance "rules require the member states to provide separate accommodation to women prisoners, to provide pre-natal and post-natal care and treatment to pregnant women prisoners, protection against abuse by male prisoners and male officials". Although later on ICCPR, 1966 and CEDAW, 1970 contain many provisions protecting people in custody and prisons but the provisions are of general application. Apart from some very basic provisions SMR were not sufficient to deal with gender specific issues and therefore there was this lacuna which needed to be filled.

In 2010, "The United Nations adopted the Standards Minimum Rules for the Treatment of Women Prisoners and Non-Custodial Measures for the Women Offenders also known as Bangkok Rules". For the first time a comprehensive mechanism was laid down to protect women prisoners from custodial violence, discrimination and inequality. It also

provided non custodial measures for women convicts that acted as supplementary provisions to Tokyo Rules, 1990. So are as the rights of child are concerned. “The Convention on Rights of Child, 1989, gives children their basic human rights: civil, economic social, cultural, and political- which enable children to achieve their full potential”. The CRC does not contain specific provisions regarding children accompanying an adult or a young parent in prison but it contains provisions that are directly relevant to the protection, assistance and care of children in special situations, and these provisions are applicable to small children living in prisons with their mothers

It was pleasant to see that at regional level many human rights mechanisms were at work based on the principles laid down in universal human rights documents. These mechanisms or systems represented different parts of the world and were so named *viz.* (i) the European Human Rights System (ii) American Human Rights System, and African Human Rights System. It is important to mention that there is no such system that can regulate human rights in the Asia or the subcontinent. These have their separate conventions and charters. These are “European convention on human rights and fundamental freedom 1953, American convention on Human Rights 1969, African Charter on Human and Peoples Rights 1981 adopted the European Prison Rules 2006. Principles and Best practices for the Protection of Persons Deprived of their Liberty in America 2008, African Charter on prisoners rights 2001”. They provide for “separate accommodation for women prisoners, pre-natal and post-natal care and treatment for pregnant and mother prisoners, sanitary needs of women prisoners, special needs of women prisoners who faced physical, mental and sexual abuse before or during imprisonment, health rights of women prisoners, personal hygiene of women prisoners, supervision of women prisoners by female staff, body searches of women by women staff etc”. A very important observation emerged from this study. While construing Article 4 of African Charter on the Rights and Welfare of the Child the South African Supreme Court said that there must be compulsory non custodial punishment for mothers. This is also in consonance with the Bangkok Rules and best interest principle of CRC.⁸

⁸ *S v M* (CCT 53/06) (2007) ZACC 18 decided on 26 September 2007.

The researcher also examined to what an extent these laws were included in the domestic laws. In India prisons are governed by the Prisons Act, 1894. It provides very few provisions that are applicable to women prisoners. The act which is more than a century old, does not even touch anywhere near the concept of Human rights of prisoners. It does not mention children anywhere. There is no specific legislation which governs women prisoners.

Section 59 of the Prison Act conferred Rule making power on the states concerning almost of prison administration. Such legislative power was used by the states to enact separate Prison Manuals right from the nineteenth century itself. As prison is a state subject under the Constitution of India therefore the prisons continue to be governed by the State prison Manuals. There is also a Model prison Manual that was passed in 2003⁹ continues to guide other manuals. Chapter 11, Part III of Delhi Jail Manual discusses provisions regarding females and children. Similarly Chapter 29 of Haryana Jail Manual contains Provisions regarding females and children. Both the manuals provide same guidelines to “protect their inherent dignity, such as, separate accommodation for women prisoners, protection against exploitation, extra diet for pregnant and nursing mothers, prohibition of imposition of handcuffs and chains on women prisoners, right to medical care and treatment but lacks the gender-specific correctional measures such as educational, vocational and work programmes along with the post-release programs for the rehabilitation and reintegration of women prisoners”. Similarly, other penal acts such as, the Haryana Good Conduct Prisoners’ (Temporary Release) Act 1988, and Punjab Prisoners’ (Attendance in Courts) Rules 1966 contains few provisions regarding treatment of women prisoners. The researcher wants to note here that in Haryana the old Punjab Prison Manual is applicable and other acts which are applicable to Punjab are also applicable to Haryana as well.

Though there are plethora of legislations and a number of policy documents still the condition of human rights of women prisoners and their children remain a neglected area both in study and their implementation. Prison and rights appear to be ante to each other but one cannot forget to see and understand that inalienable human rights are available to each individual. After all prisonisation seeks to reform the prisoner.

⁹ This Model Prison Manual has now been replaced by Model Prison Manual 2016. However the researcher found that in none of the jails the manual was implemented.

7.2 Findings of the Study

The sentencing policy of the judiciary has changed now. Women are now being punished for all types of crime and too often. With change in sentencing policy we have seen rising number of women pollution. It researcher found that maximum convicted women fell in the age group of 30-50. In Delhi alone 40% of women were in the age group of 41-50 whereas in Haryana 75% women were from age group 31-40. Many middle aged women were found to constitute maximum convicts so it was likely that many of them married. In Haryana 100% women prisoners were married but in Delhi 70% were found to be married. This gives us a clear cut idea that married woman was exposed to a different kind of mental level than others. More than 50% were married for more than 10 years in Delhi and 50% in Haryana were married for a span of 2-5 years. Nearly 75 % women were illiterate in Haryana against that a sizeable population of 30% in Delhi. Another 35% in Delhi were just primary passed. The researcher found that maximum women were having very low levels of education or they had no education at all. We can conclude that lesser the literacy value higher was the criminality. Overall also the educational status of women was found below mark where 95.75 % mothers were found illiterate and atleast 75 % mother in laws were found illiterate in Haryana. This figure touches 70% and 71.43% in cases of mothers and mothers-in-law.

The occupational profile of parents is not up to the mark. In Delhi atleast 50% of mothers were unemployed with 20% unemployed fathers whereas in Haryana there were 20% unemployed mothers with 0% fathers unemployed. Out of those who were working most of them were either skilled or unskilled worker. Nearly 50 % of women accepted that their husbands earned somewhere between Rs5000-10000 per month. A large number of over 40% prisoners believed that marital discord was one of the major factors responsible for crimes. Another sizeable population of 30% blamed their financial condition as a responsible factor o crime. Nearly 84% in Delhi and 75% in Haryana were convicted for crimes under Indian Penal Code. Over *With low levels of educational background and poor financial status the first proposition is tested positive that poor socio-economic background contributes towards criminality in women.*

As far as the trial period is concerned many women complained of their arrest in evening after sunset. Nearly 30 % in Delhi complained of it despite clear cut laws against this practice. As many as 62% of women in Haryana complained that they were not informed about the charge at the time of arrest. Another problem was related to legal aid. In Delhi more than half (53%) of woman denied the knowledge of the fact that they were entitled to free legal aid. Likewise in Haryana as well two thirds of women (75%) did not know about free legal aid. Around 40.7% of women were given free legal aid. And in Haryana 37.5% were given free legal aid. After *D.K Basu* and *Hoskot case* changes in alws have been introduced and so when legal aid is not provide or when the procedure is not followed strictly questions are bound to arise rearding implementation of laws.

The researcher also found that so far as the treatment of women prisoners was concerned they were under absolute control of the prison authorities. An in-depth examination of the conditions available to women prisoners in prisons in jails of Delhi and Haryana researcher observed that living conditions in jails were not satisfactory to protect the women prisoner's "general and gender-specific needs, due to overcrowding of barracks, non-availability to nutritious food, inappropriate sleeping facilities where they had to adjust with many others, crowded barracks due to the presence of large number of women under-trials, bad sanitary conditions, supply of low quality toiletries things, inadequate health care facilities due to absence of permanent lady doctor, non availability of appropriate and adequate medicines, non-availability of adequate and clean clothing and bedding and dearth of sanitary napkins". General health conditions of most women prisoners were not upto the mark. Many prisoners were patients of stress and depression and had other multiple diseases. A major problem was found with the kind of medical aid extended to these prisoners. There was no special arrangement of a psychologist or anyone trained to tackle the problem of mental stress of these prisoners. This is a lacuna as majority of prisoners, 58.34% in Delhi and 66.67% in Haryana claimed that they became ill entering the prisons. It is a sorry state of affairs that when right to health care has been declared as an important part of Article 21, then also prisoners in both the jails claimed that they had to make repeated requests for visits to bigger hospital.

Due to shortage of female staff in all central jails, matrons were not able to provide sufficient attention. As a result, problems of women prisoners remain unattended. As prisons fall under state prerogative, for most of the facilities the prison administration follow their respective jail manuals. Absence of proper, up to date Central legislation in this regard leaves the prisoners to the mercy of staff. Like, as compared to Delhi, though the situation of Delhi itself was not very great, women prisoners in Haryana were a neglected lot all together. They were confined to the barracks with little recreational facilities. As they came from various parts of the state, it was found that they also had problems in bonding with each other. There was no segregation of under trials from convicts. Overcrowding of under trials made it very difficult for the convicts to make use of the resources and they had to bear the ‘cut’ of soaps, detergent, refreshments, space and water particularly.

As far as the children of these prisoners are concerned an impression can be drawn that “children in prison were living in difficult circumstances where they were deprived of proper food, health care, accommodation, education, recreation etc”. No suitable programmes were found to be evolved and operative in any jail for their proper bio-psycho-social development. The children were lodged in the same jail/barracks of their mothers which were not only crowded but also did not have the kind of comfort required for ‘innocent’ children. They shared the bedding of mothers. Clothes were provide, not regularly, but on entry level or special occasions through NGOs working in Tihar.¹⁰ Children were subjected to same disciplinary guidelines like their mothers. In Delhi no food was served after about 6: 30 pm and that seemed to be the end of day for children as well. The women had to be dependent upon whatever they could manage from canteens for their children and themselves. And theft was a common feature amongst women so ‘extra food’ had to be guarded. Hygiene was another problem as there is limited water supply on designated day for washing etc.

Mothers primarily looked after children. No trained staff was found in any jail to take care of these children”. The crèche and nursery did not have specialized care takers in Tihar. The NGOs working in Tihar provided some It was quite depressing to know that

¹⁰ India Vision Foundation; Muskan; Shram; Vipassana; ISKCON and Nav Jyoti Delhi Police Founndation are some of the NGOs working in Central Jail No. 6 of Tihar, Delhi.

Ambala Jail did not have any kind of a facility for children even after Supreme Court. The only child on the date of interview was brought to the jail when he was 3 years of age and he was there, without any other companion, for last 4 years. All these years he did not study, he did not learn anything as no such facility was available but he was constantly exposed to the prison environment and language and behaviours of other convicts which is surely detrimental to him. As there was no body to take care of the child outside the prison, the child remained in jail with the mother as she herself awaited her release on bail after an appeal pending surety. All these are clear cut violations of the 2006 Judgement.¹¹

The foregoing discussion proves that as there is no express law safeguarding the interests of women prisoners and their children and whatever law has been laid down through case law is either not followed or is still to be implemented. Therefore the second and fourth propositions on which the hypothesis of this study is based stand positive.

Recreational facilities are an important part of reformation. They help develop the positive attitude towards life and bring new hopes for a better future. The future can only be achieved when we are able to infuse that energy and hope in these prisoners that life is much more than imprisonment and that imprisonment is a chance to cleanse themselves of the sin and guilt and move on to become a better person. Sadly there seems to be no attention of the government or the policy makers towards this important tool of reformation. No law or manual contains any provision that mandates these facilities and trainings. Even the case law on this aspect is scanty. Rehabilitation is the responsibility that the State must bear if it wants to ensure that the criminal is reformed.

There have been Great advancements globally for the protection of Human Rights. From UDHR where it is expressed that special care must be given to motherhood and childhood to CRC, where the best interest of the child has been given paramount importance, a drastic change can be seen. New SMRs have been introduced with women as separate subjects. It has been declared under Bangkok Rules that non

¹¹ *R. D. Upadhaya v State of Andhra Pradesh* 2006 (4) SCALE 336.

custodial sentences, on lines of Tokyo Rules, must be preferred in cases of women. The courts in India have accepted UDHR as a principle of customary international law. Also we have accepted the Bangkok rules in partiality for securing health to women prisoners and new Model Prison manual has been passed.¹² But we have failed to apply it in full spirit., have failed to live up to the expectations of the international standards. This way the third proposition seems to be positive that *“Non implementation of various international instruments has added to the abuse of human right of women prisoners and their children”*.

To the surprise of the researcher no formal training was given to women prisoners at Ambala. To train women prisoners vocationally we still follow the age old methods like tailoring, sewing, baking bread and biscuit etc. it is time that we take note of radical changes required in the training methods adopted by prison authorities. In Tihar women were engaged in works like paper work (handi craft, stationery), tailoring, pottery making or in bakery section. These traditional methods will be of little help upon their release. Most of these are already saturated works in terms of opportunities or require input of large amount of raw materials etc. that the prisoners were not very comfortable there. As for children there are no special recreational facilities. They either study in nursery or are admitted to schools outside once they away from mothers. They are exposed to such environment that it is difficult for them to assimilate in the outside world. This further illuminates that the fifth proposition that *“Traditional rehabilitative measures and techniques applied during prisonisation fail to develop the confidence of women prisoners and children and are insufficient for their reintegration back into the society”* also stands positive.

Based on the above position it is clear that the proposed hypothesis stands tested positive that,

“The prisonisation has adverse effects on the human rights of women prisoners and their children leading to their social stigma and seclusion.”

¹² <http://pib.nic.in/newsite/PrintRelease.aspx?relid=134687>.