

# Protection of Human Rights of Women Prisoners in India

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## Abstract

*Prison systems are rarely gender sensitive, and are even less so in conflict situations. When women are detained, it is crucial that international standards, applied with sensitivity to women's particular needs, are brought to bear. This article gives an overview of the relevant international law, as well as the gender-specific considerations that need to be taken into account when implementing it. Some suggestions have been given to improve the conditions of women prisoners in India.*

**Keywords:** Prisons, Law, Women, Human-Rights

## Introduction

Prison systems are primarily designed and run by men for the incarceration of men. In every country of the world, women are a small minority of those incarcerated. As a result, they find themselves held in facilities and under conditions that, at best, have been poorly adapted for them from the male mode or, at worst, are the same as those for men. Yet women have very different needs from men: they have specific health needs for gynecological and obstetric care; they are more likely to have been the primary caretakers for children before their incarceration, and many give birth while in prison; they are particularly vulnerable to sexual and physical abuse and have often been the victims of abuse before coming to prison; they are more likely to suffer from mental and emotional problems; they are more likely to be ostracized than men in the same situation when they try to return to their families and communities. Although women remain a small percentage of the total number in prison, their numbers are growing, and there is increasing concern among penal reformers about the problems and how to work to improve their situation. Imprisonment is increasingly the main recourse of the criminal justice system and criminal justice policy worldwide. High numbers of prisoners are held in pre-trial detention, often under terms that contravene even local regulations governing the appropriate duration of such detention. A clear indicator of this crisis can be seen in the prisons of the developing world. While awaiting trial, many serve time that far exceeds any sentence they might have received if they had been brought before a court of law within a reasonable time. Women can be at a particular disadvantage when applying for bail, as in many places they do not have money or hold property in their own names.

### **Profile of women prisoners**

Worldwide, more than 500 000 women and girls are held in penitentiary institutions, either as pre-trial detainees or sentenced prisoners. They constitute a small proportion of the total prison population; in about 80% of prison systems worldwide, the proportion of women varies between 2% and 9% with a median of 4.3% in 2006. Women who enter prison usually come from marginalized and disadvantaged backgrounds and are often characterized by histories of violence, physical and sexual abuse. Disadvantaged ethnic minorities, foreign nationals and indigenous people constitute a larger proportion of the female prison population relative to their proportion within the general community, often due to the specific problems these vulnerable groups face in society. Women prisoners are a small minority of the total prison population but there has been a noticeable rise in women's imprisonment in recent years. In some countries the rate of this increase has been higher than that of male prisoners. For instance in England and Wales, the number of imprisoned women has increased by more than 200% in the past 10 years, compared with a 50% increase in the number of imprisoned men during the same period.

Since their foundation, prisons have been built and run to cope with the needs of the male majority. Until recent times, the small numbers of women prisoners were simply admitted to the same prisons and were expected to cope with the same routines and facilities as men. Lack of attention to the very different and often more complex needs of women have resulted in neglect of their human rights, disregard to international recommendations and many instances of social injustice. In a world where there are widespread and persistent inequities between women and men, societies continue to fail to meet the health needs of women at key moments of their lives. A review of gender equity in health states that the present position is “unequal, unfair, ineffective and inefficient”.

The small numbers of imprisoned women mean that there are fewer prisons for them, resulting in women often being imprisoned further away from their homes. This causes difficulties for the woman in maintaining her family ties and is especially a problem if she has dependent children. Many imprisoned women are mothers and usually primary or sole carers for their children. When a mother is imprisoned, her family will often break up, resulting in many children ending up in state care institutions or alternative care. Imprisonment far from home also complicates a woman's resettlement after release. The small number of women prisons also results in the collective accommodation of women convicted for a wide range of offences in a prison with a high level of security, needed only for very few women. In fact, by far the majority of offences for which women are imprisoned are non-violent, property or drug related for which they serve short sentences. A high security level is disproportionate to the risk they pose. Drug-related offences (usually for personal use) are one of the most common crimes committed by women.

The rights guaranteed in international human rights treaties apply equally to men and women. However, the “Convention on the Elimination of All Forms of Discrimination against Women” additionally obliges state parties to eliminate all forms of discrimination against women, including refraining from engaging in any

act or practice of discrimination and taking measures to modify or abolish existing laws, regulations, customs and practices which discriminate against women. There are also specific standards and provisions that recognize the special needs and circumstances of female prisoners. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment recognizes the need for specific measures to protect the rights and special status of women, especially pregnant women and nursing mothers. Rules No. 23 and 53 of the “Standard Minimum Rules for the Treatment of Offenders” state that female prisoners should be separated from male prisoners and supervised by female officers. It also requires the provision of special accommodation for all necessary pre-natal and post-natal care and treatment. In most countries, women constitute a minority of the prison population: usually between 2% and 8%. Prison systems and prison regimes are almost invariably designed for the majority male prison population from the architecture of prisons, to security procedures, to facilities for healthcare, family contact, work and training. Women's prisons are an adaptation of prisons for men. As a consequence, prisons tend not to meet the needs of women prisoners, and women in prison are affected by imprisonment in a particularly harsh way. All too often, the human rights and basic dignity of women in prison are systematically violated.

### **International human rights standards for women prisoners**

#### **3.1 Universal Declaration of Human Rights, Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### **3.2 International Covenant on Civil and Political Rights, Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

#### **3.3 International Covenant on Economic, Social and Cultural Rights, Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

#### **3.4 Convention on the Elimination of All Forms of Discrimination against Women:**

### **Article 1**

The term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

### **Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating

discrimination against women and, to this end, undertake: ...

- To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- To repeal all national penal provisions which constitute discrimination against women.

3.5 Human Rights Committee, General Comment 21 concerning humane treatment of persons deprived of liberty

Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. ... This rule must be applied without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **Basic Principles for the Treatment of Prisoners**

There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 5(2):

Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles; aged, sick or handicapped persons shall not be deemed to be discriminatory.

### **UN Declaration on the Elimination of Violence against Women**

#### **Article 2**

Violence against women shall be understood to encompass, but not be limited to, the following:

Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

#### **Article 4**

States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- Refrain from engaging in violence against women;
- Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote

the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

- Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence.

### **UN Standard Minimum Rules for the Treatment of Women Prisoners**

Women in prisons all around the world are at risk of rape, sexual assault and torture. In some countries, gender-based violence is endemic in places of detention. Sexual violence against women in prisons has received attention from the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee against Torture. The Special Rapporteur on Violence against Women and the Special Representative of the Secretary-General on Human Rights Defenders has documented scores of incidents of ill-treatment of women in prisons. Female juvenile prisoners are often detained in adult prisons, where they are particularly vulnerable to violence. Women are placed at particular risk of sexual and physical abuse when male staff is employed in inappropriate capacities in women's prisons. In less overtly violent prison environments, improper touching during searches, being watched when dressing, showering or using the toilet what the Special Rapporteur on Violence Against Women describes as 'sanctioned sexual harassment' - is often prevalent. The presence of male correction officers in housing units and elsewhere creates a situation in which sexual misconduct is more pervasive than if women are guarded by female officers.

- In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.
- No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.
- Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts set aside for women.

### **Problems Faced by Women Prisoners**

The rate of increase in the number of women prisoners is much greater than that for men. Already, in eleven countries women comprise more than one in ten prisoners. The increase in the number of women in prison is, in some countries, primarily due to the increased use of imprisonment to punish offences that were previously punished by non-custodial sentences. This is particularly the case in relation to drug offences and non-violent theft. Women are offending and imprisonment is closely related to women's poverty. Women are particularly vulnerable to being detained because of their inability to pay fines for petty offences and/or to pay bail. Women on remand constitute a large percentage of the women's prison population in many countries. Women offenders typically come from economically and socially disadvantaged segments of society. Typically, they are young, unemployed, have low levels of education and have dependent children.

Many have histories of alcohol and substance abuse. A high proportion of women offenders have experienced violence or sexual abuse. At the same time, there tends to be greater stigma attached to women's imprisonment than men's, and women who have been in prison may be ostracized by their families and communities.

Problem of prisoners languishing in jails without trial is a very serious one confronting judiciary. Non-availability of separate prisons for women and their sexual exploitation are the common problems of Indian prison system. The imprisonment of mother with dependent young children is a problematic issue. Female wards in prisons are mostly over crowded. Adequate clothing and toilet facilities are not made available. The general health care of women prisoners in prisons is not up to the mark. The facilities for education, vocational training and recreational facilities are also very limited. Majority of the women prisoners are from rural background, illiterate, shy and do not have courage to communicate their needs and grievances to the prison staff in the jails. They cannot also ventilate their sufferings and transmit the same to higher authorities

The Constitution of India confers a number of fundamental rights upon citizens. The Indian State is also a signatory to various international instruments of human rights, like the Universal Declaration of Human Rights which states that: "No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment". Also important is the United Nations Covenant on Civil and Political Rights which states in part: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Therefore, both under national as well as international human rights law, the state are obliged to uphold and ensure observances of basic human rights.

One of the best tenets of human rights law is that human rights are inalienable and under no circumstances can any authority take away a person's basic human rights. The fact that this tenet is not sometimes made applicable to prisoners is well documented. There are innumerable judgments of Supreme Court and High Courts, showing how prisoners' rights are violated. The judgments highlighted the highly unsatisfactory conditions prevailing inside the prisons and the failure of the prison authorities to provide an environment which is conducive to the maintenance of prisoners' rights, partly rooted in the belief that the prisoners do not deserve all the rights and the protections that the constitution provides to all citizens. Besides being morally wrong and legally invalid, this belief does not show adequate recognition of some basic facts about the prison population.

There are many problems with the prisoners in India. A large number of the prison population in India is not even convicted of any crime. Even those who are convicts, a large number of them are first time offenders involved in technical or minor violations of law. Very few are recidivists or hardened criminals. Also, as was observed by the Mullah Committee, a majority of the inmates come from the underprivileged sections of the society, as persons with the means and influence generally manage to remain beyond the reach of law even if they are involved in violation of law.

Women in prison create a significant challenge for prison authorities whose policies, regimes and programmes are geared primarily to men. Bosworth discusses the issue of the 'equal' but 'different treatment of men and women, boys and girls, in

custody. She notes that, within the 'official literature', women are 'perceived to have different needs than men' and are 'managed differently'. Women's prisons or units within male prisons are seen as a 'bolt-on' to an established system that is male at multiple levels. But, once inside, in terms of their daily operation, the expectations on women's behavior, responses and participation in the regime are deeply genderised with every move, action and reaction scrutinized through a lens of imposed 'femininity'. These issues have a well researched and established contemporary history. Carlen's definitive study of Cornton Vale, published in 1983, stated that the 'comparatively small numbers of women incarcerated' had 'resulted in all of them being accommodated in one closed prison'. Many women were held long distances from home. Many were imprisoned for non-payment of fines and over 60 per cent received sentences less than six months. Carlen concluded that the 'majority of women in prison have been sent there for purely punitive purposes' yet a 'high proportion ... have been diagnosed as having either 'personality disorders', alcohol and/or other drug-related problems'. The majority of those interviewed described physical abuse at the hands of husbands, cohabiters, male relatives or police officers. Carlen's study found that women prisoners were judged, assessed and, to some extent, classified on their capacity for social interaction, their femininity in terms of appearance, tidiness, motherhood and on their maturity by prison officers, governors and medical staff. Yet prison rules, the constant monitoring by officers of conversations and the lack of privacy together worked against meaningful social interaction. Women were reluctant to 'bare their souls' in situations where their revelations could be used, formally or informally, against them. Women 'received little sympathy regarding pre-menstrual tension and even less recognition of their need for increased access to washing facilities during menstruation'. Carlen and Worrall found a general acceptance that:

'women's healthcare needs in prison both physical and mental are more various and complex than men's ... but the overwhelming experience of women in prison is that their health needs are not consistently dealt with in a respectful and appropriate way.'

Specific needs go beyond 'routine menstruation', to include 'pregnancy, cervical cytology, and breast cancer screening, and miscellaneous hormonally-triggered 'women's ailments' ... chronic mundane conditions such as constipation and other digestive problems'.

Women in the contemporary prison face many problems; some resulting from their lives prior to imprisonment, others resulting from their imprisonment itself. Women in prison have experienced victimization, unstable family life, problems in education and work, and substance abuse and mental health problems. Social factors that marginalize their participation in mainstream society and contribute to the rising number of women in prison include poverty, lack of social support, separation or single motherhood, and homelessness. Lack of financial support and social ostracisation makes life after release a veritable hell.

Particularly difficult situations for women are separation from children and other significant people, including family. Some women are pregnant when they come into prison and this can be a particularly difficult time, physically and psychologically. World over, it has been found that prison services are not sensitive

enough in timely recognition and treatment of their mental health problems and do not address their vocational and educational needs adequately when compared to men. As mentioned earlier, women are more liable to abuse. In some parts of the world, it is said that women in prison are likely to be subject to more disparate disciplinary action than the men. The characteristics of women offenders and their pathways to crime differ from male offenders. The system responds to them differently, therefore there is the need for gender-responsive treatment and services.

It has been found that young children of women prisoners are deprived of basic minimum facilities of education, health, nutrition, care, recreation and accommodation. Justice Iyer committee also looked into the living conditions of children of women prisoners. The Committee observed that children of women prisoners were callously placed in prisons in general except in a few central jails for women where the childcare was satisfactory. A few committees such as Mullah Committee and Iyer Committee also observed the living status of women prisoners and their dependent young children living with them in jails. Another problem is that their economy is predominantly agricultural one and therefore they belong to low income group of families. The family behavior towards them also reveals that they are in constantly under mental stress leading towards tense life. Most of the women offenders were arrested for the case of dowry deaths. The facilities provided for development of children of women prisoners were not adequate. And the women have to live in over crowded.

### **Suggestions**

Some suggestions have been given below to improve the conditions of women prisoners.

- Before sending a women who is at her advance stage of pregnancy or lactating or is being accompanied with her young child to a jail, concerned authorities should ensure that whether jail has basic minimum facilities of health, recreation, accommodation and nutrition to care child and mother. In case, such facilities are not available in the jail, concrete efforts to avail such facilities should be made by jail authorities.
- The children must be separated from such a state of living, which is harmful for development of children.
- The women prisoners should be accommodated in a separate barrack and in case separate barrack is not existing in the jail; the primary consideration should be that the barrack is not overcrowded and children of women prisoners get sufficient space for accommodation and their movement.
- The young children along with their mothers should be provided separate food, and nutrition. The food of kids may be supplemented by reasonable quantity of milk, fruits, sweets, baby food and other nutrition components as recommended by hospital doctors. During the illness of child, suitable food as prescribed by doctors should be made available to them.
- Children of women prisoners may be provided adequate clothes, bed sheets and other necessary materials for maintenance. Women prisoners should also be provided adequate quantity of clothes, bed sheets, bedding, sanitary napkins,



- soap, detergents, and oil etc. for maintenance.
- In case of serious illness of the mother of young child, jail authorities immediately make alternative arrangement for care of child.
- Basic facilities like crèches, Aganwadi centre, primary education centre, recreation etc. should be ensured in each jail. If not possible, at least proper arrangement for such facilities may be ensured through involvement of local reputed NGO's and government officials.
- Women prisoners should be provided adequate learning materials such as books, exercise books, copies, pencils, slates, etc. so that they may be educationally empowered. Moreover, women prisoners should be imparted professional education, training and entrepreneurial skills for their proper rehabilitation. This type of arrangement may be ensured through strengthening, encouraging and supporting local NGO's.
- Women prisoners engaged in work programme should be provided their due wages and honorarium so that their motivation for rehabilitation programmes may be sustained.
- Prison administration has to be made more sensitive and responsive to the problems of the children of women prisoners. The jails should be provided sufficient resources to ensure that care, nourishment, protection, welfare and development of young children living with their mothers in jails.
- The jail staff should be provided training and orientation for coping up new changes and proper care and welfare of women prisoners along with their young children living with them in jails.
- The Juvenile Justice Act also needs to be amended and young children of women prisoners may be included in the Act so that these neglected children can derive benefits of the Act for their care, protection, development and rehabilitation.
- Judiciary's role in issuing several direction to Central and State governments to prevent violations of human rights of the women prisoners is laudable. But to bring needed improvement, active cooperation of government is must. Judiciary needs adequate staffing to arrest the problem of pending cases of under-trials. It is high time the government, police, jail staff and judiciary become considerate to the special sensibilities of the women prisoners

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