



Women in Detention

Tanaya Wageshwari

ABSTRACT

This paper comprises of the prison systems that rarely gender sensitive and are even less so in the conflict situation where resources may be limited and other concerns may prevail. Women in detention face particular risk of ill-treatment and torture.

More than half a million women and girls held in penal institutions around the world either as pre-trial detainees or having been convicted and sentenced. In the main, women commit petty nonviolent offences such as theft and fraud; they come from an impoverished and marginalized part of society and they tend to have the background of physical and emotional abuse and alcohol and drugs dependency. Many countries female prisoners have been convicted of the drug-related offence, but women are rarely major players in the drugs-trade.

In some parts of the world, women may also be detained as a result of discriminatory laws and cultural practices or tribal laws or traditions, rather than codified law. The majority of women in custody in conflict areas are detained for ordinary crimes. Women in detention have their conditions particularly poor and in human mainly because of overcrowding.

Mothers as detainees have particular, physical, vocational, social, legal and psychological needs, different from those of men. An overview of the relevant international law as well as the gender-specific consideration explicitly protects and promotes women's rights. It is based on the principle of non-discrimination so all the provisions should be as applicable and accessible to women as they are to men. However, in practice, the application has focused on the public sphere dominated by men and neglected the private sphere where women live. The most extreme form of discrimination faced by women is gender-based violence. One of the gravest forms of gender-based violence is rape. Other forms are threats of rape, touching, insults, mechanical restraints on women in labour and virginity testing.

The growing number of women in prison in many countries brings urgency to tackle the serious problems they face.

Keywords-Women, Prison, Criminality, Violence, Discrimination

Received 11 Jan., 2023; Revised 25 Jan., 2023; Accepted 27 Jan., 2023 © The author(s) 2023. Published with open access at www.questjournals.org

I. INTRODUCTION

“Women have much to tell us...Women are capable of seeing things in a different angle. Women can pose questions that we men cannot understand”- Pope Francis

A person who is on trial in a court of law is said to be undertrial. Undertrial means a situation where the accused is facing a criminal trial but is not released on bail and law requires that such accused should get speedy trial. Detention is a form of legal sanction for doing an act which is unlawful or for not doing an act which is mandatory by law. It is certainly not necessary that detention has to be in prisons, nowadays with the emergence of concepts like social welfare, human rights and of theories like reformatory theory, observation homes, female prisons have come into existence. In this paper, we will go through all circumstances and effects, whether the post or pre-prison period, which detention casts upon the life of women.

It symbolises a system of punishment and also a sort of institutional placement of under trials and suspects during the period of the trial. Since there cannot be a society with crime and criminals, the institution of prison is indispensable for every society. It involves the information of an informal inmate code & develops from both the individual characteristics of inmates & from institutional features of the prison. The history of prison clearly reflects the changes in society's reaction to crime from time to time. The attribute of society towards prisoners may vary according to the object of punishment & social reaction to crime in a given community.

Prison systems are rarely gendered 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. Women in detention face particular risks of ill-treatment and torture. The majority of women in custody in conflict areas are detained for ordinary crimes. Women represent only a small percentage of detainees which makes them particularly vulnerable in a detention environment. Prison and other detention institutions are generally perceived as a male universe and make very little provision for the specific needs of women. The fact that women detainees form a minority of the total incarcerated population is also reflected in detention infrastructures that are sometimes inadequate, few in number, and located far from their families. Women's segment is one of the fastest growing segments of prison population all over the world, but especially in the United States. The increasing amounts of women are locked in prison due to different reasons. A lot of women in prisons are drug addicts who originally took drugs to escape a life of difficulty and childhood trauma.

During the years 1980 and 1983, the female population of prison increased nearly 31.3%, at the same time men increase 18.2% during the same period. In 1993, the number of women was 5.8% of the total population and 9.3% of the total jail population. The imprisoning of women has a bad influence on her family, 67% of women in prisons are mothers of children who are under 18.7% of these women (and only 50% of men) had custody of their dependent children before imprisonment. Statistics show that 6% of women are pregnant at the moment when they go to the prison.

A big amount of incarcerated women had domestic violence, 32% of the imprisoned women (nearly 4,000 women) are in prisons because of murders of their husbands, ex-husbands or boyfriends.¹

Women in prison suffer from violence, discrimination and another kind of injustices. It is known that 57% of imprisoned women have had severe and prolonged sexual and physical abuse.²

Being in prison, women are objects of sexual misconduct from correctional staff and other prisoners.³ Prisons may be unable to offer adequate maternity and anti-natal care, or appropriate access to feminine hygiene products. Women can have different needs relating to problems such as substance addiction, mental health, & anger management, sexual or physical abuse. Women in prisons have a higher level of mental diseases and are more likely to have been victims of all kinds of abuse than the general population and are at higher risk of self-harm and suicide. In mixed-sex prisons, the security regime may be disproportionately harsher for women because it is designed for men.

II. EXPERIENCED DISCOMFORTS BY WOMEN IN PRISON

Women in detention face many kinds of ill-treatment like torture, beaten, sexually molested, cruelty, etc. The use of shackles on pregnant inmates is just one example of the cruelty and ill-treatment. As well as the use of restraints on pregnant and sick prisoners including sexual abuse, lack of medical care & lengthy periods of confinement is also in so-called super maximum units.

An official study of women in Indian prisons says many of them are beaten, sexually molested or otherwise harassed in jail. It said most women prisoners live in overcrowded, unsanitary condition & often rear their children in jail. The report said the difficulties of prisoners are "an extension of the general indifference that Indian Society shows to the woman". More than 17% of all unconvicted women prisoners in India are mentally unstable and have been placed in jail despite a lack of mental health care.

Reports of rape and other forms of sexual abuse- including sexually offensive language & male staff touching women's breasts and genitals during searches or watching them when they are naked-are widespread in U S prisons & jails.

Brazilian law prohibits women's prisons from using male guards. But last October, several women at Bom Pastor Women's prison in Recife separately told Human Rights Watch researchers that they witnessed the same male guard verbally harass and grope inmates.

Up to 90% of Australian female detainees were victims of abuse prior to incarceration. Australia's female prison population has skyrocketed over the last decade, and most female detainees have experienced abuse before they get to jail. These experiences range from childhood abuse to sexual assault and intimate partner violence during adulthood. As a result, the majority of female prisoners suffer from complex trauma.

Iraqi authorities are detaining thousands of women illegally and subjecting many to torture & ill-treatment, including the threat of sexual abuse. In Iraq, women suffer a double burden due to their second-class status in Iraqi society from the severe flaws of the criminal justice system. In custody, women described being kicked, slapped, hung up-down and beaten on the soles of their feet, given electric shocks, threatened with sexual assault by security forces during interrogation, & even raped in front of their relatives & children.

¹<http://www-unix.oit.umass.edu/~kast> or/walking-steel-95/ws-women-in-prison.html; accessed on 29.12.2017,07:43 Pm

²3 Cristina Rathbone, *A World Apart*, Random House, May 2005, P.22

³4 GAO Report "Women in Prison-Sexual Misconduct by correctional staff" June 1999, P.9

The problem of undertrial prisoners has assumed new proportions in recent years. Thousands of undertrial prisoners are languishing in various jails for periods much longer than the maximum term for which they could have been sentenced if convicted. Many of them are innocent persons who are caught in the web of law eagerly waiting for their trial date and several of them are even prepared to confess their crime and accept the sentence. There are several reasons for this miserable plight of undertrials, some of them being, court's inability to take up the cases because of their busy schedule, the prolonged police investigation, unsatisfactory bail system and legal representation being beyond the meagre means of poor offenders. The pre-trial detention essentially involves the question of liberty, justice, public safety and burden on the public exchequer. The poor are generally subjected to pre-trial detention mostly because they cannot afford sureties and stand personal bonds. It not only affects the family life of the undertrial but also adversely affects his morale due to the vicious impact on the prison environment.

"The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to psychological; and physical deprivation of jail life, usually under more onerous conditions that are imposed on convicted defendants. The jailed defendant loses his job of he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."⁴

III. LIFE OF WOMEN AFTER PRISON

Women in prison face many problems in different countries as we have already discussed under "Experienced discomforts by women in prison". Torture, sexual harassment, sexual molestation, cruelty, etc; are the main example of ill-treatment which women have to face in prison. Women are locked into prison mainly due to the reason for drug addiction, murder, theft, etc; and for which they have to imprison for many years.

Some factors leading to women's imprisonment are common: in the main, they have committed petty, non-violent offences; they come from impoverished and marginalised parts of society; & they tend to have a background of physical and emotional abuse, mental health problems and alcohol or drug dependency. Women's imprisonment is closely related to poverty, both as the reason for women's offences & because women often cannot afford legal services or to pay fines or bail. Female prisoners are often primary or sole carers & their incarceration can have a devastating often on their family and society, particularly on young children.

The imprisoning of women has a bad influence on her family. In society also there is the bad impact of the same. After completion of prison, women's life has totally changed. In the society as well as in family-women who had their own qualitative status before prison; has completely changed and they are neglected amongst their own.

In other respects, the profile of women's imprisonment relates to the differing legal, political & cultural contexts of the societies in which they live. There are several negative consequences prevails in the life of women after prison.

Many problems women face after release from prison are similar to that of men, however, women are likely to suffer particular discrimination and stigma. For example, female spouses often provide support to husbands in prison and upon release; on the other hand, women tend to be sheened by their husbands and are often rejected by their families. In some countries, they may even lose their parental rights. When a woman comes home, her family may not want to her there or they may be part of the problem.

The major issues that women face after release from prison are: - Re-establishing a home and family life, including regaining legal & physical custody of children; finding affordable housing and meeting other basic needs; securing employment that pays a sufficient income; creating new social networks that may or may not include intimate relationships; fulfilling the multiple conditions of a parole plan, including continued so bristly, if not recovery from alcohol or drug addiction; & negotiating the stigmatized perception of women ex-prisoners by the general public- potential employers, landlords & community members.

IV. NATIONAL PERSPECTIVE

- Well, known sets of standards for correctional health care come from the National Commission on Correctional Health Care (NCCHC). The standards specifically address the care & treatment of pregnant women.⁵
- On the occasion of International Women's Day on 8th March 1996, two identical resolutions for constituting a standing committee of both the Houses for improving the status of women were moved in the Rajya Sabha and Lok Sabha. The matter was considered by the Rules Committee (11th Lok Sabha). Hence, the

⁴Mr Justice V.R. Krishna Iyer in *Moti Ram v. State of Madhya Pradesh* (1978) 4 SCC 47 at p.52 para 14: Prof. N.V. Paranjape; *Criminology & Penology with Victimology* at p.494, Central Law Publications.

⁵www.aclu.org; accessed on 02.01.2018, at 11:36 AM

Committee on Empowerment of Women was constituted on 29th April 1997 which consists of 30 members. It functions: -

- For improving the status or condition of women.
 - To secure the women's equality, status and dignity.
 - For comprehensive education and adequate representation of women in every field.
 - For the welfare programmes for the women.
- National Commission for Women Act, 1990
- Safeguard of rights of women granted by the Constitution and laws,
 - Study problems faced by women in the current day & make recommendations to eradicate these problems,
 - Evaluating the status of Indian women from time to time.
 - Funding and fighting cases related to women's rights violations.
- Over the course of 14 years, the National Commission for Women has proposed a total of seven Bills and drafted one convention for SAARC, relating to trafficking of women and children.
- Protection of women prisoner's rights in India: - Authorities have a duty to protect women detainees against all the forms of physical or psychological violence and abuse by the staff and other inmates. They must also ensure the protection of their rights by providing adequate facilities to meet their needs, such as appropriate health care services and access to medical specialists.

The High Court of Madhya Pradesh in *S.P. Anand v. State of M.P.* (AIR2007 M.P. 166), has extensively dealt with the basic rights which are available to prisoners despite curtailment of their right to liberty. For example, a prisoner must have reasonable accommodation to live a healthy life as provided under the Prison Rules.

The Supreme Court in *State of Gujarat v. High Court of Gujarat* (AIR1998 SC 3164), reiterated that reasonable wages should be paid to prisoners for the work/labour done while in prison and aid guidelines for the same. The court further held that conviction for a crime does not reduce the person into a non-person whose rights are subject to whims of prison administration.

In its historic judgement in **Sunil Batra v. Delhi Administration**⁶, the apex court held that the prisoner are entitled to all fundamental rights which are inconsistent with their incarceration.

In **Sheela Barse v. State of Maharashtra**, the Supreme Court on a complain of custodial violence to women prisoners in jail, directed that those helpless victim of prison in justice should be provided legal assistance at the state cost and protected against torture and maltreatment⁷.

V. INTERNATIONAL PERSPECTIVE

- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an International Bill of Rights for Women, consisting of a Preamble and 30 Articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.
- International Law requires that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and the penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation.⁸
- As the UNHR Committee has pointed out, this imposes on states a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment. Prisoners may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must guarantee under the same conditions as for that of free persons.⁹
- The UN Declaration on the Elimination of violence against women¹⁰ states that violence against women includes physical, sexual or psychological violence, perpetrated or condoned by the State. (Article 2)
- The Standard Minimum Rules for the Treatment of Offenders¹¹ states 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 prenatal care and treatment, personal hygiene and clothing and bedding.
- Article 14 of Third Geneva Convention requires that 'women shall be treated with all the regard due to their sex and shall in all circumstances benefit from treatment as favourable as that granted to men.' The provi-

⁶AIR1978 SC1675

⁷AIR 1983 SC 378

⁸Articles 10(1) & 10(3) of the International Covenant on Civil & Political Rights

⁹UNHR's Committee, General Comment 21, 10 April 1992

¹⁰28 December 1993

¹¹1955, accepted by the UN Economic and Social Council in 1957

sion specific to women protect their privacy and modesty and addressed medical and psychological needs mainly related to pregnancy and childbirth. Any form of sexual violence is prohibited.¹²

- Anyone deprived of their liberty by the State has right to be treated with humanity and with respect for their dignity. The state has a positive obligation to ensure detainee's enjoyment of their rights subject only to the restrictions that are unavoidable in a closed environment. This is a fundamental and universally applicable rule that, as a minimum, cannot be dependent on the material resources available and must be applied without distinction of any kind.¹³
- The Standard Minimum Rules for Non-custodial Measures (also known as the Tokyo Rules) provide a set of basic principles to promote the use of noncustodial measures, community involvement in criminal justice, and a sense of responsibility among offenders¹⁴. They are particularly relevant to women deprived of their liberty since many of their offences are for minor crimes that do not necessitate custodial sentences.
- A new standard currently under discussion in the UN Commission on Crime Prevention and Criminal Justice is the Draft UN rules for the treatment of women prisoners and non-custodial measures for women offenders¹⁵. This does not seek to replace the Standard Minimum Rules or the Tokyo Rules but to supplement them, clarify their application, and recognize the specific needs of women prisoners.
- Finally, the United Nations Declaration on the Elimination of Violence against Women¹⁶ describes violence against women as encompassing but not limited to physical, sexual, and psychological violence occurring in the home, in the general community, and perpetrated or condoned by the state. It sets out a number of steps that states should take, including the training of public officials to sensitize them to women's need.
- 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.
- Human Rights Committee (HRC), General Comment 21 concerning the 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, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or another status. Basic Principles for the Treatment of Prisoners There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or another 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.

Referring to an American case on prisoner's right, i.e. *Procunier v. Martineg* (1947 40 L Ed 2D 224), the Court emphasised that since the liberty of the prisoner is constitutionally curtailed due to his confinement, his interest in the limited liberty left to him becomes all the more sustainable.

V. CONCLUSION

Prison systems are rarely gendered sensitive and are even less so in conflict situations, where resources may be more limited and other concerns may prevail. As the majority of prisoners are usually men, prisons in most countries are designed for the needs of men, and women's prisons are often incorporated into the same premises. However, in many countries, the rates of female imprisonment are growing significantly, often because of an increased use of imprisonment to punish offences that were previously subject to non-custodial sentences. As a result, pressures on already overstretched prison systems are mounting, leading to overcrowding and resources being even more strained. For most women offenders, community sanctions and non-custodial sentences are a far more appropriate response than incarceration, and some countries are identifying alternative schemes. When women are detained, it is crucial that international standards, applied with sensitivity to their particular needs, are brought to bear. The growing number of women in prison in many countries brings urgency to tackling the serious problems they face: the reasons for their detention, their treatment in custody, and the challenges awaiting them when they are released.

¹² See GC I, Art. 12; GC II, Art. 12; GC III, Art. 14, 25, 88, 97, and 108; GC IV, Art. 14, 16, 21–27, 38, 50, 76, 85, 89, 91, 97, 124, 127, and 132; AP I, Art. 70 and 75–76; AP II, Art. 5(2) and 6(4).

¹³ UN Human Rights Committee, 'General comment no. 21', 1992, para. 3, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3327552b9511fb98c12563ed004cbe59?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3327552b9511fb98c12563ed004cbe59?OpenDocument).

¹⁴ 14 December, 1990

¹⁵ The Bangkok Rules, adopted by the UN General Assembly in December 2010

¹⁶ 20 December, 1993

The Constitution of India guarantees equality to women and various laws have been enacted to protect and empower women. But the pathetic situation of women prisoners languishing in jails is a serious social problem. The problems faced by them are an outcome of the general societal indifference towards them. The concept of human rights is totally alien to such women. The press has frequently exposed the violence and sexual exploitation of women and youth in the jails. Though there are elaborate rules in the constitution and laws to protect women, very few women know about them. A 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 needs of women prisoners often differ from their male counterparts. Women need gender-specific facilities for healthcare, to help them in childbirth, to care their children in prison, to receive counselling to guard against the possibility of rape and sexual assault and to maintain contact with their dependents outside the prison. This is reflected in the international standards on the treatment of prisoners and detainees. 'The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment' explicitly recognises the need for specific measures to be adopted to protect the rights and special status of women, particularly pregnant women and nursing mothers.

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

- Programmes should be conducted to sensitise the prison administration on gender issues and the special needs of women prisoners.
- Besides special facilities for pregnant women, arrangements should be made to allow women to go back to their families for postnatal care.
- It is necessary to take special care to rehabilitate women, prisoners, as it is harder for them to find acceptance in civil society after release than men. Thus women should be specially equipped with vocational skills to empower them to earn their livelihood on return to society.
- Non-discriminatory access to education, vocational training, meaningful & remunerated work and recreational activities.
- Hiring or recruiting more of female officers in order to escape sexual harassment cases.
- To provide alternatives to incarceration available to women offenders or an equal basis with male-offenders.

“A women is like a tea bag – you can't tell how strong she is until put her in hot water” – Eleanor Roosevelt