

Why to Reduce Women Imprisonment in India

Niharikaa Awasthy

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Abstract

In many countries, the proportion of women incarceration has skyrocketed and is fast rising. This has surpassed the number of males incarceration. It is obvious that women prison is the most neglected area of the criminal justice system. The best way to say it is that criminal justice is created by men for men. The truth is that women's rights have always been questioned and jeopardised in prisons or outside prison walls. According to the most recent data available from the end of 2015, Indian prisons detained 17,834 women. Only 17% of these women are imprisoned in purely female prisons, with the rest kept in female enclosures of general prison systems. National and international organisations agree that the conditions of prisons and the women who live in them must be urgently improved (Women in Prisons India, 2018).

Keywords: Incarceration; Restorative; Restorative Justice; Women Offenders.

INTRODUCTION

Women have suffered greatly in a male-dominated culture, and many would argue this fact, in India it doesn't much matter whether women belong to rural or urban part of the country, few of them are unable to enjoy their own rights for a variety of reasons irrespective of whether they are in the prison or out of the prison. Nonetheless, While I am writing this, the fact is that there are now a number of women out there fighting for their rights in the face of lopsided gender statistics and power dynamics. Women's rights, prison conditions, and the reason for committing petty crimes are inextricably linked, which I will discuss in the article. There are

certain extremely frequent significant problems in Indian prisons, and the situation is likely to be similar or worse in many impoverished nations. Overcrowding, protracted incarceration of pre trial convicts, deplorable housing circumstances, a lack of treatment programmes, and charges of apathetic, even inhumane treatment of prison employees have all drawn the attention of critics throughout the years (Times of India Blog, 2022). Those in charge of the criminal justice system must take a good hard look at it. In the 1960s and 1970s, people were unaware of the women's sector in prison. Nowadays, people are aware, thanks to internet globalisation. People are cynical. They demand transparency and clarification from the government about what normative methods the government is using to address this vital issue, what ought to be done, and what is actually occurring in this regard. I urge from the Indian government to form problem solving courts and restorative justice organizations for women and government should begin to adopt policies for the welfare of women in prison, thus resolving the issue of recidivism. The reintegration of women into society should be examined closely.

With the help of this article, I will address the

Author Affiliation: Senior Legal Advisor, Naturo Electro Homoeopathy Medicos of India, Janakpuri, New Delhi 110058, India.

Corresponding Author: Niharikaa Awasthy, Senior Legal Advisor, Naturo Electro Homoeopathy Medicos of India, Janakpuri, New Delhi 110058, India.

E-mail: dr.niharikaa.0903@gmail.com

critical issues and what needs to be done, in the hopes of igniting a debate among policymakers, researchers, and the government of India to improve the standards of the prison system and, most importantly, to prevent women from entering the prison who have committed minor offences, and to incorporate diversion policies that are critical to give a diversion from CJS to Rehabilitation, PSC's, Community pay back, and so on.

I disagree with the hypothesis that establishes a relationship between menstruation and criminal behaviour (Morris, 1987) theorists argue that menstruation reminds women of their inferior status. However, this idea appears to be more perspective based. In my opinion, there is no rivalry between men and women; the dilemma starts when people believe there is one. Women are unique, and men are unique. This is factual, and it must be grasped.

Theorists (Morris, 1987) claim that half of female admissions were in the psychiatric department; I somewhat agree because iron deficiency is linked with mental illnesses such as mood disorders, developmental disorders, and ADHD; however, to believe that a woman will go out and commit a criminal act because of iron deficiency is obnoxious.

According to the Corston report, most women serving short sentences or on remand should not be sentenced to custody in most cases, and only those women who have violated their licence or community supervision should be remanded to custody (Tankebe, 2010).

As per empirical studies, the sentencing process is typically depicted as basically using official legal

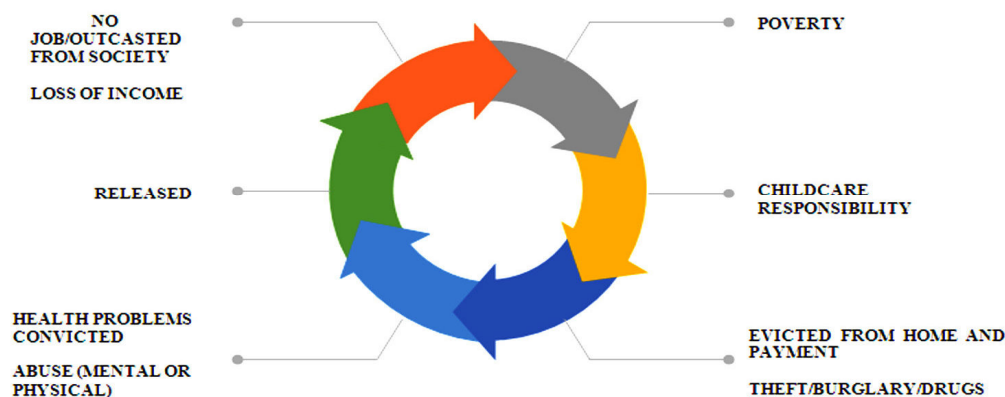
nomenclature since it is its only or key starting point, but according to the author, we must understand the representations of similarity from the standpoint of sentencing (Tata, 1997).

Why We Need to Decrease the Women Imprisonment

More than 500000 women and girls are imprisoned worldwide, either as pre trial detainees or as condemned criminals. They make up a minor part of the total jail population; in around 80% of prison systems worldwide, the number of women ranges between 2% and 9%, with a median of 4.3 percent in 2006.⁷ Women who enter jail are often from marginalised and underprivileged families, and they frequently have histories of violence, physical and sexual abuse. Disadvantaged ethnic minorities, foreign nationals, and indigenous people make up a higher proportion of the female jail population than the general population, which is typically owing to the special issues these vulnerable groups confront in society (Van Den Bergh et al., 2011)

Poverty

Poverty is one of the core reasons for women who commit crime. To put other way, Women's offence and incarceration are inextricably linked to women's poverty. Women are more vulnerable to detention due to their inability to pay small offence penalties or bail. Women criminals are often from economically and socially disadvantaged backgrounds. They are usually young, unemployed, have a poor level of education, and have dependent children (Parveen, 2004).



To put it more simply, the pattern continues because no one wants them, hence the criminal justice system takes them. These women are in terrible trauma. Poverty, deprivation, poor mental

and physical health, restricted life opportunities, neglect, abuse, addictions, and other social cultural commonalities are often overlooked (Cracknell, 2021) (Tata, 2020).

Custody Should not be the Last Resort with Prison as the Default

One of the most serious issues is the policy and mindset of "custody as a last resort." It's time for us to let go. Little will change unless and until we begin to flip that thinking by identifying specific conditions and objectives that are ordinarily exempt from imprisonment. Empirical evidence is now emerging that leads us to suspect that, in fact, community sanctions may not reverse but, if unchecked by the principles of parsimony and proportionality, fuel the rise in the use of imprisonment. The author has humbly mentioned that offences aren't something that can be turned off like a tap. Relapses and lapses are unavoidable, and the individual's perception that decision makers actually want her to succeed is vital. As a result, the prison commissions and the board on women offenders' recommendations to increase the use of review hearings may be helpful. So, what are the options? Rather than absolving the individual sentencing professional of responsibility for societal issues, two simple public principles should be adopted (Tata, 2020).

Expensive

(Statista, undated) In fiscal year 2020, the Indian state of Andhra Pradesh had the highest jail cost per inmate, at almost 200 thousand Indian rupees. In comparison, Meghalaya spent only roughly 11 thousand Indian rupees each detainee that year. According to National Crime Records Bureau (NCRB) data, the average yearly cost on a jail inmate has risen from Rs 19447 in 2010-11 to Rs 29538 in 2014-15. It should be mentioned that prisons are a state responsibility and are controlled by state governments (Factly, n. d). Instead of imprisoning women for minor offences, that money should be spent for education or scholarships.

International Law

Comprehensive international guidelines have been created to facilitate gender mainstreaming in criminal justice system operations, including, but not limited to, implementing efforts to satisfy the gender-specific requirements of women as suspects, accused, and imprisoned. These standards can be found in both binding and nonbinding international instruments, as well as guidance documents and tools aimed at assisting in the execution of such instruments. The following instruments are related to the larger features of criminal justice administration (United Nation, 2018) (samantha. young, 2008) United Nations ECOSOC Resolution

2002/ 13, Guidelines for the Prevention of Crime provides numerous ways to reducing crime and suggests that crime prevention initiatives pay appropriate consideration to the diverse needs of men and women.

(Undocs.org, 2022) The United Nations General Assembly Resolution 67/187, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, establishes the State's responsibility to establish a national legal aid system that is accessible, effective, sustainable, and credible, and that recognises the right to legal aid of persons in contact with the law at all stages of the criminal justice process.

United Nations General Assembly (United Nations, 1990) Resolution 45/110, United Nations Standard Minimum Rules for Non custodial Measures (the Tokyo Rules) establishes a framework for using non-custodial measures in the criminal justice system. While there is no particular mention of women's measurements, this was later handled by the Bangkok Rules.

The United Nations General Assembly Resolution 70/175 (United Nations, 2015), United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), was passed in 1955 and revised by the General Assembly in 2015.

The United Nations ECOSOC Resolution 2002/12, Basic Principles on the Use of Restorative Justice Programs in Criminal Matters, offers a number of flexible, adaptive, and complementary alternatives for criminal justice systems that take legal, social, and cultural elements into account (United Nation, 2018).

The Luanda Guidelines, established with the cooperation of CSOs and UNDP, specify a rights based approach to pretrial detention, arrest, and post-trial incarceration and advocate practises that may be implemented into regional programmes (United Nation, 2018).

In addition, the following instruments directly relate to the interests and rights of women:

(www.un.org, n.d.) Article 2(g) of United Nations General Assembly Resolution 34/180, Convention on the Elimination of Any Forms of Discrimination against Women (CEDAW) sets a duty on States to "repeal all national criminal measures which constitute discrimination against women".

Updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in

the Fields of Crime Prevention and Criminal Justice, United Nations General Assembly Resolution 65 25 gives guidelines on crime prevention and criminal justice responses to violence against women.

UN General Assembly Resolution 65/229, United Nations Rules for the Treatment of Women Prisoners and Non custodial Measures for Women Offenders (the Bangkok Rules), applies to women prisoners under sentence, suspected women offenders awaiting trial while detained, female offenders subject to non custodial measures and corrective measures, and women in protective custody.

Restoration

(Ramesh Chandra Majumdar, Raychaudhuri and Datta, 1988). In Brahmbaibartra Puran, 'Lord Mahadeva' told Brahma that if people commit offence, it is the duty of a pious man to forgive him. The notion of forgiveness is viewed as humane approach to focus on ambitions of restorativeness, reparation and reintegration. (Dhami, Mantle and Fox, 2009).

The unifying concept behind restoration is restitution of positive relationships and enhanced personal and communal situations.

Restoration literally means an integrity that aims to restore a person back to a former or original or unimpaired position. Restoration is one of the primary themes and concerns in the Bible (Jain, 2020). Restoration emerged with advocacy, theory and research associated with restorative justice beginning in the mid 1980s. (Daly and Proietti-Scifoni, 2011).

Restoration of prisoners is a cue in the field of penology, and in contemporary interpretation it is associated with addressing innovative management of prisoners. The scope and elements of restoration vary according to its application in different fields. In the field of penology restoration demonstrates the power of transformation. Restoration shall aim for positive change in the person who committed the crime. Restoration emphasizes the need to treat prisoners with reverence which would enable them to reintegrate into the society and allow them to lead a lawful behaviour (Jain, 2020).

CONCLUSION

A prison is a prison. It is not a welfare state. It's not drug rehab. We need to sort out the instances in a society that should normally be non imprisonable.

An NGO or a sentencing council is well equipped to do so. In terms of the list that can be created, these are typically the sources of factors that we can expect to see through guidelines that are monitored for compliance and so on. We shouldn't send certain kinds of people to prison unless they're offending demands. We need to exclude certain purposes, such as rehabilitation, as a ground for imposing imprisonment and be careful to specify certain kinds of cases as normally non imprisonable. The causes surrounding women's incarceration are far deeper, and the solutions presented above will not solve them. In order to achieve long-term success, legislative measures and modifications in criminal justice systems must be backed by actions to eliminate all types of violence and discriminatory attitudes in all parts of society, including awareness-raising, education, and training.

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