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MOTHERHOOD IN PRISON: IMPROVING LIFE OF FEMALE INMATES IN INDIA

AUTHORED BY - AMAR SINGH NATHAWAT

ABSTRACT

In India the growth of women prisoners is now growing steadily. There are numerous issues that affect the women in prison, mostly those who are going under-trials. The very purpose of the prisons of reformation is not effective. And therefore addressing and recognizing rights and ensuring the same to the women prisoners, along with issues of women in prison is a need of an hour. Even when today we have rules relating to prisoners regarding their welfare, treatment this doesn't really get into the proper practice. For instance there are number of children of female inmates who have not been provided with the proper health & recreational services. And therefore this paper is an attempt to understand all these issues and come up collectively with much possible solution and step that can be taken to resolve the same, to come up with desirable and appropriate changes in the services that has to be made for them.

Keywords: Prison System, Women Prisoners, Correctional Facility, Custodial Facility, Child Care, Prison Reforms.

INTRODUCTION:

'Because all that matters to her is the world around their children.'

- Amar Singh Nathawat¹

Over the centuries the very method of punishment in the form of imprisonment has evolved. Not just in India but also in most of the world today prisons work as reformatory centers for the criminals and not just a center for a means of punishment. And that is why Supreme Court of India mentioned that - *"Therapeutic approach... as an effective method of punishment"*.² And following the same **Ministry of Home Affairs** therefore has focused upon the need of positive approach in the prisons systems of the nation, in order to have the positive impact and

¹ Law Graduate, School of Law, University of Petroleum & Energy Studies, Dehradun.

² SC Order in Re - Inhuman Conditions in 1382 Prisons dated 5th February 2016. W.P.(C) No.406 of 2013

opportunities so that the inmates can reform themselves.³ Prisons for the individual those who break the law for them it works as a **Correctional Facility**, their purpose is the **reformation in those offenders**. The very prison and its administration comes under the **'List II' and the 'Schedule VII' of 'Constitution of India'** where it is a *'state subject'*. And in spite of knowing this the very presence systems mostly involved in hiding such type of violence which happened behind closed doors which affects the very reform of such offenders. **And this very problem takes a one step ahead when it comes to women inmates**. The reports of prison statistics of India shows a non stopping trend in the growth of female population who are being incarcerated. And search women inmates also involves the inmates who are being mother and that's why on the other hand there has been increase of the number of children who accompany the mothers during their **incarcerated period**. **And here is where the problem lies, our very prison systems are not equipped with the facilities in order to provide with proper care and the needs of the children specially for such children who are or fall within the age bracket of below 6 years**. The very problem is because there is a very possibility that's when these children grow they could face the social constraints and can also has the high risk of getting involved in different types of crime or abuse and can became deviant. And following the same **Ministry of Home Affairs** therefore has focused upon the need of positive approach in the prisons systems of the nation, in order to have the positive impact and opportunities so that the inmates can reform themselves. India has been in its transformational stage when it comes to correctional system that exist in India which in one or the other way has been influenced by the various committees, policies, agencies of not just the national but also of the international level. Though it has been the scenario that *as compared to men women prisoners together have a less percentage in the Indian Prisons*. Study that has been conducted, reveals the data showing the trends related to women imprisonment by the **Ministry of Women and Child Development** in the year 2016 shows the statistics, that as in the year **2000** the percentage of women in prison was **3.3%** which in the year **2015** has reached to **4.3%**. Out of many reasons the reason because of which most of the women are in the prisons is because of the changes in the social life and also the familial pattern. Though this is not available in context to the women prisoners in India. But the present statistics which has been there mentions that the women convicts who are being under trial majorly constitute the crime of **murder that is 37%** which has been followed by the **dowry death which constitute nearby 15%** (*Ministry of Women & Child Development , June2018*). **There is not much statistics has been available regarding the proper demarcation as to what type of crime has**

³ <http://mha1.nic.in/PrisonReforms/pdf/PrisonAdmin17072009.pdf>

been conducted by the women who are being in prison but it has been observed mostly the women who are incarcerated because of the crime of for the killing of her husband or also the murder of the relatives of her husband because of the reasons like cruelty by the husband or the relatives of husband (*Ministry of Women & Child Development, June 2018*). The following above mentioned are the leading areas because of which the women go behind the bars.

NATIONAL & INTERNATIONAL GUIDELINES/LEGISLATIONS: AN ANALYSIS

“Much more remains to be done to identify and address the pathways to women’s incarceration; to establish better, safer and more gender-sensitive conditions for women prisoners; to ameliorate the negative consequences of women’s imprisonment”

It has been stated by the Special Rapporteur Ms **Rashida Manjoo** in the report on the *Violence Against Women* titled –“**Women & Detention**”, 2014 by the ‘**United Nations High Commissioner Office**’. Till now it has been 6 years since this report was published but still at present the scenario is same as it was 6 years ago, if not worsen. Though India has its own set of legislation’s but still with regards to prisoners plight it has been discussed in and been dealt in various Covenants, Declaration, Conventions and also the Guidelines of other various Organisations of International Level to name the few one like ‘**UN Standard Minimum Rules for the Treatment of Prisoners**’ (**Nelson Mandela Rules**) along with ‘**United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders**’ (**the Bangkok Rules**) and more like these. As it has been mentioned above the prisons systems that has been designed are designed in way considering majority male population. And considering this very fact the organizations of international level like United Nations, have *worked non-stop towards the women prisoners right*.

In one of the report of the **Quaker United Nations Office**, it has come into noticed that “*Because of the very kind of stigma that is being faced by the Women of India when she gets raped and because of this it has been majority seen that the victim is not going to show herself up in the court in order to testify against the rapist. Similarly the Women is not going to show up when she gets imprisoned to testify for trial.*” And not just this but it is being seen, according to various data available that mostly **70% women are such who are not even convicts and are under-trial women’s**. And this very scenario goes simply **against the Nelson Mandela Rules** which

has been discussed above which implies that the under-trial prisoners should be kept differently and not with the one who has been convicted. Also the **Nelson Mandela Rules provides for the mandatory providing of the medical facility and services for the prisoners whenever needed.** Which most of the time has been noticed to be absent because of numerous **number of complaints by the prisoners and because of the health issues they faces behind the bars.**

The Prisons Act, 1894

In India the **Prisons Act, 1894** is the one such important legislation which is there to deal with the prison systems. This act came before the India got independence and it has been made by the Britishers to give prisons cell under there subjugation of them but **from then to now this act has hardly gone through any such changes.**

The **Prisons Act, 1894** has not been updated with time such as it *failed to cope up with the legal and technological developments in the country.* Though there are various government reports where the importance has been highlighted of the **CCTV Surveillance** but the **same has not been even considered to add it in act as a provision.** But most importantly what act has failed into miserably is to provide or have the specific provisions related to the very **specific needs of the female inmates such as for the pregnant women inmates, and the children who are accompanying them to the the prisons for them too,** and regarding the need of **sanitary for female prisoners.** And yes off course there is complete absence of any steps or programs with context to the reformation of these prisoners. And various other recommendations that has been made under the international conventions should be tried to adopt them into the Prisons Act,1894 with the amendment in it. Also the **Prison Manuals which has been recommended from time to time can be adopted under the act,** so that whether it he or she at least both such prisoners can complete their sentence in a prison in conditions which are livable.

1. BASIC RIGHT'S & NEEDS OF WOMEN

According to the **Prison Statistics of 2018⁴** in India shows that the total number of prisoners which were **4,66,084** which includes both *convicts and the under trials.* Out of these **4,46,842 prisoners** were the *male* whereas **19,242 prisoners were female.** Though the Indian prison system do not discriminate between the male or female prisoner but because the structure of a

⁴ Prison Statistics, National Crime Records Bureau, Ministry of Home Affairs, 2018

society is such and because of the prevalence of various ideologies such as **patriarchy** there is a general kind of discrimination being faced by the women; because of their gender and because of this, the Prison System of India quite results in *exceptionally rough treatment for these women inmates*.⁵ It has been highlighted by the **World Health Organization** that most of the women prisoners who end up in the prison are usually those who were already facing some or the other type of difficulties in life prior to the prison. It highlight the very issue that there is no homogeneous segment of society in the prison as the prison mostly consist of the people who belongs to the marginal section of society the one who are not that much educated and also belong from disadvantage socio-economic group.⁶ It is not just about discrimination but when this discrimination is been coupled with the *differences that has been there between the female inmates and Jail authorities*, It is then when it leaves to the challenges which now just not remained related to discrimination but also it range from the very basic amenities like **lack of sanitation, torture, death and improper medical facility**. The issues related to the very hygiene like 'sanitary napkin', 'unhygienic jails', 'sanitation' & 'food related issues' are considered to be very major issues along with the physical and sexual abuse, And also *no proper facilities or amenities related to children of search women inmates*.

Though in the year 2016 there was constitution of **National Model Prison Manual** which *laid down certain guidelines* in order to raise the bar of living condition of women inmates in the prison, but it hardly seems to be implemented in reality. And not just this but also the **Constitution of India provides** with the basic fundamental rights like that of **Right to Life**⁷ to every person and also on various occasion the Indian court's have come up with the implementation regarding the basic rights of the prisoner's. Indian court's have issued the guidelines in relation to the **proper welfare of women along with the children who lives in the prison**⁸, and also by mentioning that the right to life just don't get flown away as the individual enters into the prison premises though it can be affected by the incarceration⁹. And just because someone get convicted that doesn't mean all the fundamental rights have been denuded which such person otherwise possesses¹⁰. Hence we do know that there are various number of judgments

⁵ Women In Detention and Access To Justice, 10th Report, Committee on Empowerment of Women

⁶ WHO, Bulletin of the World Health Organization, Imprisonment and Women's Health: Concerns About Gender Sensitivity, Human Right's and Public Health

⁷ Indian Constitution , Article 21

⁸ RD Upadhyay V. State of Andhra Pradesh, (1996) 3 SCC 422.

⁹ Sunil Batra V. Delhi Administration, (1978) 4 SCC 409

¹⁰ M.P V. Shyamsundar Trivedi, (1994) 4 SCC 395

and the policies in relation to the welfare of the women prisoners but still such female inmates faces the challenges and such challenges are not just due to because of the weak laws but rather because of the *very weak implementation of such strong laws*.

2. CONDITION OF PRISONS FOR WOMEN IN INDIA

It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.— Nelson Mandela

In a society where we live in, **where women are being considered as a second class citizen**, it would not be hard to find that the prison system of India it's just a reflection of it. The need of **separate prison cell for the women inmates** has already been recognize by the **Ministry of Home Affairs** for each state of the India¹¹. But in reality the picture is different as *there are only 15 states out of which only 8 states have a single separate dedicated women prison*¹². At the very national level the women jails have the occupancy off around **58%** but in reality 83.1% of all the female incarcerated women are being imprisoned in different types of jails. And in the states like **West Bengal and Maharashtra** the occupancy rates of women has been **159% and 142% respectively**. The debate regarding the separate need of the '**custodial facilities**' for **women and men** has been into the limelight since 1988, but it is hardly been seen that there is any such recommendation, as still in most of the states the women prisoners are residing in the same male prisoners complex. **Another problem is of course the separation between the undertrial prisoner from that of the convicts** the importance of which has already been internationally and also nationally been seen, but the action for the same couldn't put forward because of the **space constraints**.

Overcrowding

Overcrowding has become one of the major issues today with the Indian prison system; the reason for the same is not hard to find because it is the result of the '**inordinate delay in trials**'. **The most of the women under-trials in the prisons are there because of their inability to pay the procedural find that has been imposed on them by the courts**. It has been stated by the **National Police Commission** that more or less around **60% of all arrest that is being made with regards to women prisoners are mostly unjustified**. And because of this the **expenditure of jails**

¹¹ Women In Detention and Access To Justice, 10th Report, Committee on Empowerment of Women

¹² Women In Detention and Access To Justice, 10th Report, Committee on Empowerment of Women

has been accounted for 43.20% because of this unnecessary overcrowding of jails¹³. ‘Section 436’ of the ‘Code of Criminal Procedure’ provides for the *direction in order for the release of eligible undertrial prisoner*¹⁴. The **Prison Manuals** not just national but also a state level has already laid down few basic rules, but it has hardly been seen that these rules have been put in practice. As other than the overcrowding the next major issue is the ‘**abuse of women prisoners**’ both ‘**physically**’ and ‘**psychologically**’. Though there is no such particular data available there as per how many death of women inmates been there but **in 2018 a total of 46 death have been reported because of HIV**. Mental illness is also one of the other issue which have been majorly be neglected due to lack of facilities¹⁵¹⁶.

3. CONDITIONS OF WOMEN IN PRISONS

“Prison is a second-by-second assault on the soul, a day-to-day degradation of the self, an oppressive steel and brick umbrella that transforms seconds into hours and hours into days.”

— Mumia Abu-Jamal

From the very beginning the concept of prison has always been put forward with keeping in mind the design, architecture, training and has developed itself keeping **men as the focal point** for all programs in a prison¹⁷. If we notice properly back to the history we would find that, the men for any offenses were being sent to the prison but women on the other side were sent only for the **moral turpitude** as a punishment for crime like for the act of ‘**prostitution**’ or ‘**adultery**’. But now the time has passed society has progressed; around us the violent crimes that has been committed by women has also increased and do the number has increased our *prison system has still not evolved* and thus remains the same as it was before and because of this the women prisoners are kept in a prison system which are essentially designed for men¹⁸. According to the reports that has been mentioned by the **National Crime Records Bureau in 2018** states that as per the total population of the prisoners, the **female prisoner’s amount to 4.1%**¹⁹, and it is clear indicator in stating the fact that the community of female prisoners are in minority under the

¹³ Prison Statistics, National Crime Records Bureau, Ministry of Home Affairs, 2018

¹⁴ Bhim Singh v. Union of India, (2015) 13 SCC 605.

¹⁵ Prison Statistics, National Crime Records Bureau, Ministry of Home Affairs, 2018

¹⁶ Women in Prisons, India, Ministry of Women and Child Development, Government of India,

¹⁷ Quaker United Nations Office, Women in Prison: A Commentary on the UN Standard Minimum Rules for the Treatment of Prisoners

¹⁸ Quaker United Nations Office, Women in Prison: A Commentary on the UN Standard Minimum Rules for the Treatment of Prisoners

¹⁹ Prison Statistics, National Crime Records Bureau, Ministry of Home Affairs, 2018

prison population. And in the general scenario it has been observed that the women who are sent behind the bars their character has been judged by the society for not upholding to dignity and values of being a woman. Apart from this kind of discrimination the other thing which the women prisoners face is the **gender specific health related issues** as stated earlier our **Prison System 'lacks in proper healthcare facility'** and the proper institutional build up for the care of those children mother of whom have been incarcerated²⁰. The **Ministry of Women and Child Development**²¹ in its report stated that though there is the prison manual in order to ensure few expect like the 'bathing area', the 'toilet' and such other things but in reality it has been much different²². And also it has been stated that the *issue of health and hygiene have been increased because of the availability of water in the presence because of which the prisoner are not even able to bath for months and months*²³.

It has also come into the notice that among most of the female prisoner, the **female are majority off group age 18 to 50 years**, and considering this fact there's at most need of the hygiene products related to female business NS these business should be provided with all such products the same was found to be missing²⁴. In our society the **motherhood has always been kept on the high pedestal** it has been always represented by the saintly obligation as it insures the very idea and the institution of family. But knowing this very fact and the belief, still to the very large context the community of ours put the blindfold on their eyes towards such pregnant women who are in the jails. When women are in their pregnancy it is most important that they should get the proper nutrition and the special diet must be there for such pregnant women And the same was found missing in our Indian prisons. Also there's no such facilities or the medical professional in order to take care with the reproductive needs of such pregnant women. And while we are dealing with the issues of pregnant women the another issue that comes into the picture is of the children of those mothers who Have been incarcerated. For every child below the age of 6 years please very important of them to be With their mothers because such ears are considered the very formative years of childhood.

By the international organizations the importance of proper environment for the bringing up of the child has always been put emphasize by the several conventions like **United Nations**

²⁰ <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>.

²¹ Women in Prisons, India, Ministry of Women and Child Development, Government of India,

²² Women in Prisons

²³ Women in Prisons, India, Ministry of Women and Child Development, Government of India

²⁴ Women in Prisons, India, Ministry of Women and Child Development, Government of India

Convention on the Rights of the Child²⁵. There is no doubt in stating the fact that putting the children along with their mothers in the prisons have a long term impact on the psyche of children²⁶. We have several guidelines like that of **National Model Prison Manual** but still the condition of a prisons have been the same as it was before and thus *because of this the children of the pregnant women who are being incarcerated are becoming secondary victim along with their mothers*²⁷.

4. MOTHERHOOD IN PRISONS OF INDIA: IMPACT OF MOTHER'S INCARCERATION ON

CHILDREN

In the entire universe the most difficult phenomenon is motherhood, motherhood is being considered as a primal task to bring new life on earth and mostly it is been seen that the society do not take any cognizance towards this biological and emotional phenomenon, and the general attitude of the society towards the woman is not what it has to be, even if we consider this very progressive modern era. And this very attitude of the society is the reason that today the issue related to the maternity of female inmates seems to general society as not of much importance and also not considered by the them (society) to be worthy enough of attention. According to the data of the **National Crime Record Bureau** it states that in the Indian prisons the total number of women in total are **17,834** and it also states that about 1,817 children live with their incarcerated mothers in the prison itself. And the statistics of the same data also shows that the Indian prisons lacks in the the medical staff. The staff that has been sanctioned for the medical purposes including both men and women are **2,993** out of which *only 1,866 seems to be present*. The same report of **NCRB** shows that the *51 female inmates has died in their imprisonment out of which 3 were suicide and the rest were natural deaths*.

From the above data it seems that the condition of the women inmates are quite dreadful. Most of the time it happens because the general picture in the society of prison is not of reformative place but the place of punishment and that is why the *incarceration from the long time has been marked constantly with the disgust, with suspicion, being punished and derision*. Something

²⁵ U.N.O.H.C.R., United Nations Convention of the Rights of the Child, E/CN.4/RES/1990/74 (March. 7, 1990).

²⁶ WHO, Bulletin of the World Health Organization, Imprisonment and Women's Health: Concerns About Gender Sensitivity, Human Rights and Public Health.

²⁷ WHO, Bulletin of the World Health Organization, Imprisonment and Women's Health: Concerns About Gender Sensitivity, Human Rights and Public Health.

that makes the parent-hood kind of area with lots of criticism and that to specially for mothers. The society look towards them irresponsible caregivers and compare them to the other abusive and neglectful parents. The children of these incarcerated women are denied with the attention that usually other children of same age gets. The negative impact on the children is very high in the case where the incarceration of mother has happened than that of the fathers. Positive development of the children Is very important for which the presence of mother essential but the imprisonment of mothers can lead to different types of **social psycho problems** on children like the sense of security for the sense of loss and also the emotional issues. And not just these but also the '**loneliness**', '**change of temperament**', '**sadness**', '**sleeping disorders**', '**academic performance**' and all the '**disturbing behaviour**' either at home or at the school children get affected in all the ways because of this imprisonment of mother.

5. CONCLUSION & SUGGESTIONS

“It is not the prisoners that need reformation . It is the prisons.” - Oscar Wilde

There is lot to do for the improvement of Indian prison system when the very means to do it already exist. but what has been lacking is the very first step and the willingness to start these programs, laws etc, So that the women behind the bars can be ensured of proper livable conditions in the prisons. Till now the government mostly have been negligent when it comes to the prison system upliftment. There is requirement of inspection from time to time of the prison premises and also to prepare the report on the timely basis, so to come up with the proper data including of each dimension end lacunae that exists in prison system. So in order to come up with better action plan to improve the condition of prison as well as the women prisoner. **No availability of much data** is also one of the issue to which different NGOs and government has to work upon so in order to tackle with the different problems that women face when she is in custody like torture which they face and the problem of housing for their children, there is need of data because whatever the data has been available it is with context to whole of Prison System and is not specifically with context to the condition of women prisoners. It has to be insured and it is also one of the most important aspect that there should be the **release of undertrial prisoners on the timely basis along with the convicts, at all costs**²⁸. It is very important to reintegrate the women with that to the society in order to protect her from this **vicious cycle of poverty and crime**. And the same can be done with the help of facilities like **education, skill development** or any other

²⁸ United Nations for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders

type of **vocational training** during their stay in prison. It is the society that has to fight for the rights of these women.

Suggestions:-

1. By the means of having being conducted this research the research scholar tries to or wish to find from this base line study that what is the scenario after the **post – incarceration life** and wish to know how or whether it was hard for these women's to reintegrate back with the society or community. Accordingly the need of an hour is more and more data and research studies that has to be conducted so that to work upon the very socio- psycho condition and well-being of these incarcerated women's who are also mothers.
2. Even the religiously following of the provisions that exist today can make a big difference in a long run. All states should now make step by following the **National Model Prison Manual 2016**.
3. As it has already been mentioned above in the paper that there is a need of timely inspection of the prisons. These timely inspection would make difference by helping in keeping the records and coming up with reports with the areas where we can act on improving the lacuna's that exist in our Prisons Systems.
4. In order to ensure the best interest not just of the mother but also her child there has to be proper and other special procedures that has to be present and being conducted during the arrest of such women/mother.
5. There is a need of proper accommodation equipped with '**sanitation**' and '**proper hygiene**', '**medical facility**' and '**proper nutritious diet**' *for the pregnant prisoner* and also after childbirth for her child and same could be done by inserting the provisions related to the same, which don't exist today.
6. Also such women prisoners who are mother or either pregnant should be provided with separate cell, so that special care of such women's and attention towards them with their daily basic needs could be provided immediately especially in case of pregnant women.
7. There is a need of adopting the '**gender - specific approach**'. For this we should think more on measures like **Non- Custodial**, or **Community Sentencing/ Service**, or other **Reformative Justice Programs**. Though most of the time there is acceptance of human rights based approach as a correctional model in the form of policies and reformative moments, but the need is mostly of the very constructive implementation of the model and which seems to be not there or found missing.

8. Overcrowding has become one of the major issues today with the **Indian Prison system**; the reason for the same is not hard to find because it is the result of the **'inordinate delay in trials'**. Court's also have to ensure that there should be no pending undertrial cases because if it's there it can make a whole lot of impact on the women inmate who has been pregnant or has given childbirth.

References & Bibliography

- Article's/Report's/Research Paper's:

1. A.Arditti, J, L.Few, A, Tech, V & VA, B 2005, 'Mothers' Reentry into Family Life Following Incarceration', Sage Publications,Criminal Justice Policy Review, vol. 20, no. 10.
2. G, R 2017, 'Rights of Women Prisoners - A critical analysis'.
3. Gaudin, J. & Stuphen, R 1993, 'Foster Care Vs. Extended Family Care for Children of Incarcerated Mothers', Journal of Offender Rehabilitation, vol. 19(314), pp. 129–147.
4. Gabel, S 1992, 'Behavioural Problems in Sons of Incarcerated or Otherwise absent fathers:The issue of Separation', Family process, vol. 31, pp. 303–314
5. Lakshmi Devi 1977, 'Crime against Women'.
6. Model Prison Manual 2016 2016, Ministry of Home Affairs, Govt.of India.
7. Model Prison Manual for the Superintendance and Management of prisons in India 2003, Bureau of Police Research and Development, Ministry of Home Affairs.
8. Nath, B 1979, Judicial Administration in Ancient India, Janaki Prakashan, Patna, pp. 91–89.
9. National Policy on Prison Reforms & Correctional Administration 2007, bprd.nic.in, Bureau of Police Research&Development, Ministry of Home Affairs,Govt.of India.
10. Parke, R., Clarke & Stewart, K. 2004, The Effects of Parental Incarceration on Children : Perspectives, Promises and Policies.
11. Prison Statistics India 2015, National Crime Records Bureau
12. Sarkar, J 1952, Mugal Administration, M.C.Sarkar & Sons Ltd, Calcutta, pp. 56–90.
13. Sharma, R 2014, 'Problems of abuse of women prisoners' rights in India with special reference to Punjab'.
14. Thombre, A, R.Montague, D, Maher, J & Tusty Zohra, I 2009, 'If I Could Only Say It Myself: How to Communicate with Children of Incarcerated Parents', Journal of Correctional Education, vol. 60, no. 1, pp. 66–90.

15. Women in prisons India 2018, June, Ministry of Women and Child Development, Govt. of India.
16. Living With Imprisoned Mothers, Children Struggle For Normal Childhood, By Shreehari Paliath, Preety Acharya | 7 Oct, 2020
17. Children of women prisoners in India struggle to get proper food and education despite guidelines, Shreehari Paliath, & Preety Acharya, Oct 09, 2020
18. In Chains — Motherhood in Indian Prisons, Sehar Vedi, May 2, 2019
19. India: guiltless children in prison, Rajesh Venkitswaran, June 1 2018
20. CHILDREN OF Women PRISONERS THE INVISIBLE Trial PRAYAS 2018 Tata Institute of Social Sciences Mumbai
21. With Mothers Imprisoned, Nearly 2,000 Children Had To Stay With Them In Jail In 2015, IndiaSpend, July, 2017
22. Children Languishing Behind Bars: A Grim Reality of Indian Prisons, blogs.cuit.columbia.edu, By Vasudev Singh and Karan Trehan
23. Women Prisoners and their Dependent Children: A Study of Jaipur and Jodhpur Central Jails in Rajasthan Asha Bhandari
24. Shekar. Sanober. 2002. "Forced Separation: Children of Imprisoned Mothers: Social Work in Criminal Justice", Prayas Project of the Tata Institute of Social Sciences. Mumbai
25. Alam, Shahrukh. 1998. 'Under-trial population in jails - an evaluation of the effectiveness of the directions of the Supreme Court in this regard, & suggestions for their proper implementation', National law school journal, 10: 123-12
26. Ahuja, Ram. 1969. Female offenders in India. Meerut: Meenakshi Prakashan
27. Aldak Yogendra. 2008. 'Respect for prisoners, rights is a requirement of the Constitution', Combat Law 7(2): 67-72
28. Annandale, E. and J. Clark. 1996. 'What is gender? Feminist theory and the sociology of human reproduction Sociology of Health and Illness, 18(1): 17-44.
29. Bandyopadhyay, Mahuya. 2007. Reform and every day practice: Some issues of prison governance', Contributions to Indian Sociology
30. Chatteraj, B.N. 2000. A Study on Children of Women Prisoners in Indian Jails, Delhi: National Institute of Criminology and Forensic Sciences
31. Bisht, J. S. 2003. 'Custodial torture: An invasion to right to life: A socio legal perspective', Indian Bar Review, 30: 255-268
32. Ghosh, S. 1986. Female Criminals in India. New Delhi: Uppal Publishing House.

33. Kaushik, Anupma & Sharma, Kavita. 2009. 'Human rights of women prisoners in India: A case study of Jaipur central prison for women', *India journal of gender studies*, 16(2): 253-260
34. Lakshmi, K. Vijaya. 2006. 'Rights of the prisoners: A special reference to women prisoners in India', *Supreme Court journal*, 6(34)
35. Nagla, B. K. 1982. 'Women and crime: A sociological analysis of women criminality in India', *The Indian journal of social work*, 23: 273-282
36. Ojha, B P. 1983. 'A socio legal evaluation of rights of the prisoners', *Indian bar review*, 20(2): 93-103
37. Pandey Awdesh and S.P. Singh A. K. 2006. *Women prisoners and their dependent children*. New Delhi
38. Singh, O R. 2004. 'Children of women prisoners and role of NGOs', *Indian socio-legal journal*
39. Sohoni, N.K. 1989. *Women behind bar*. New Delhi
40. Srivastava, Anita. 2004. *Women in India: Problems and prospects*. Delhi
41. Tizard B, Hodges J. 1978 'The effect of early institutional rearing on the development of eight-year-old children'. *Journal of child psychology and psychiatry*. 19: 99- 118.
42. R D Upadhyaya v State of AP [2006] INSC 204, at p.10
43. Rakesh Shukla (2006) "Looking after children of women prisoners" at Infochange analysis website <http://www.infochangeindia.org/analysis128.jsp>
44. Chatteraj, B.N. *A Study on Children of Women Prisoners in Indian Jails*. National Institute of Criminology and Forensic Sciences, Delhi,2000
45. Pandit govind ballabh pant institute of studies in rural development. Final report- Children of women prisoners in jails: a study in Uttar Pradesh lucknow 2004, Planning commission government of India
46. Rakesh Shukla (2006) "Looking after children of women prisoners" at Infochange analysis website <http://www.infochangeindia.org/analysis128.jsp> (accessed March 2007).
47. Chatteraj, B.N. *A Study on Children of Women Prisoners in Indian Jails*. National Institute of Criminology and Forensic Sciences, Delhi,2000
48. Kasera, Pamini, *Rights of Women Prisoners in India* (June 7, 2020). Available at SSRN: <https://ssrn.com/abstract=3621467> or <http://dx.doi.org/10.2139/ssrn.3621467>
49. Thombre, A, R.Montague, D, Maher, J & Tusty Zohra, I 2009, 'If I Could Only Say It Myself: How to Communicate with Children of Incarcerated Parents', *Journal of Correctional Education*, vol. 60, no. 1, pp. 66–90.

50. Alam, Shahrukh.1998. 'Under-trial population in jails - an evaluation of the effectiveness of the directions of the Supreme Court in this regard, & suggestions for their proper implementation', National law school journal, 10: 123-12
51. F.Reed, D & L.Reed, E 1977, 'Children of incarcerated parents.Social Justice', Journal of Social Justice/ Global options, vol. 24, no. 3, pp. 152–169.
52. Gaudin, J. & Stuphen, R 1993, 'Foster Care Vs. Extended Family Care for Children of Incarcerated Mothers', Journal of Offender Rehabilitation, vol. 19(314), pp. 129–147.
53. <https://thewire.in/rights/why-female-prisoners-should-be-treated-differently-from-men>

- Books:

1. Cherukuri & Suvarna 2008, Women in Prison: An Insight into Captivity and Crime, Foundation Books, Delhi.
2. Das, S 1977, Crime and Punishment in Ancient India, Abhinav Publications, New Delhi, p. 69.
3. Foster, H & Hagan, J 2007, 'Incarceration and Inter generational Social Exclusion', Oxford journals published on behalf of the society for the study of social problems, vol. 54, no. 4, pp. 399–433.
4. Bhatnagar, R.R.,1990. Crimes in India: Problems and Policy. New Delhi: Ashish Publish House
5. M. P. Jain, 'Indian Constitutional Law', (6th ed. Lexis Nexis 2010)
6. Dr. J.N. Pandey, 'Constitution Law of India', (56th ed. Central Law Agency, 2019)
7. P.S.A Pillai, 'Criminal Law', (13th ed. Lexis Nexis, 2017)

- Websites:

1. Ministry of Home Affairs Website, <https://www.mha.gov.in/>
2. <https://timesofindia.indiatimes.com/city/mumbai/women-inmates-can-undergo-abortion-says-hc/articleshow/54433747.cms>
3. www.lowyinstitute.org
4. <https://www.jstor.org/stable/26369541>
5. https://tiss.edu/uploads/files/Children_of_Women_Prisoners_-_The_Invisible_Trial.pdf
6. <http://www.thehindu.com/news/national/4470-mentally-challenged-jail-inmates-in-country-in-2012-ncrb/article5150162.ece>
7. <http://timesofindia.indiatimes.com/city/hyderabad/Jails-are-homes-for-1813-infants-in->

India-NCRB/articleshow/24708425.cms

8. <http://rajprisons.nic.in/download/OTHER%20USEFUL%20INFORMATION.pdf>

