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THE ANALYSIS OF THE HUMAN RIGHTS OF WOMEN PRISONERS AND THEIR CHILDREN FROM A CONSTITUTIONAL PERSPECTIVE

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“Convicts are not by mere reason of the conviction denuded of all fundamental rights which they otherwise possess”

Justice V.R Krishna Iyer

Abstract

A prison is a kind of correctional institution designed to accommodate those who have violated the law. The primary objective of correctional facilities is to facilitate the rehabilitation and reintegration of incarcerated individuals. However, it is often seen that prison institutions conceal acts of violence and immorality inside its confines, so impeding the rehabilitation process for those convicted of crimes. Therefore, it is imperative to acknowledge and uphold the fundamental rights of incarcerated individuals in order to promote their rehabilitation. The challenges associated with incarceration are further exacerbated when considering female prisoners. The prison systems mostly prioritize the needs of male inmates and lack enough provisions to effectively handle the specific requirements of incarcerated women. The jail population in India is seeing significant growth, with particular concern around the conditions of women's prisons. Current data from the National Crime Records Bureau 2021 (NCRB) reveals that several Indian states not only face a scarcity of available space, but also lack the necessary amenities to accommodate women prisoners and under-trials in their prison systems. The research also emphasizes the adverse effects on the developmental well-being of children who are compelled to reside in unfavorable conditions whilst accompanying their incarcerated moms. Based on data provided by the National Crime Records Bureau (NCRB), the total count of incarcerated women in India at the conclusion of 2021 amounted to 22,918 individuals. However, it is noteworthy that the collective capacity of

the nation's 32 women correctional facilities stands at a mere 6,767 prisoners, indicating a significant disparity between the number of female prisoners and the available accommodations. Of the total population of 22,918 incarcerated females, a subset of 1,650 women convicts were accompanied by their children inside the confines of the correctional facility. Among a total of 22,918 incarcerated females, 1,418 individuals, accompanied by 1,601 children, were classified as under-trial prisoners, while 216 individuals, together with 246 children, were categorized as convicted prisoners.

Introduction

Throughout history, acts of criminality have consistently evoked disdain among societies characterized by a high degree of civilization. However, the intensity of this animosity escalates when a female perpetrator is implicated. The significance of the act supersedes the explanations provided. However, it is important to acknowledge that regardless of the circumstances, an individual who has committed a crime is a member of the human species and should not be deprived of fundamental rights essential to their life. The evolving notions of penalties have significantly transformed the landscape of human rights concerns. Punishment has evolved beyond its traditional role as just a means of retribution or deterrence. The newly implemented mechanisms have successfully aligned themselves with the rehabilitative paradigm of punitive measures.

The concept of prisonization entails incarcerating individuals with the intention of facilitating their personal growth and transformation, aligning with the underlying philosophy of "Hate the Crime not the Criminal." However, it is important to acknowledge and uphold the basic human rights of a criminal who is under the care of the State, since achieving this cannot be done in isolation. The convict lacks the ability to unilaterally assert these rights.

The issue of women inmates presents an additional challenge, namely for children who are born in jail or those who are obliged to reside in prison alongside their mothers, although not being offenders or suspected of any wrongdoing. During their developmental years, individuals reside in close proximity to correctional facilities. It is imperative that the jail authority or the government ensures that these youngsters are given with enough nutrition and appropriate clothing.

The children of incarcerated moms have a lack of typical familial atmosphere, care, and

compassion from family members such as fathers and siblings. Consequently, they are compelled to spend their crucial developmental years inside a confined setting with other individuals who have committed crimes. The aforementioned group is characterized by their vulnerability and so requires specific care.

Inmates and Female Criminality

Numerous officials throughout several nations have advocated for equal treatment, emphasizing the need of justice in relation to their male counterparts. The issue of women convicts has been neglected by academics and intellectuals for an extended period of time. The lack of consideration for gender, social status, and background in the treatment of women convicts has resulted in a marginalized and overlooked female jail population. It has been observed that there is no inherent justification for the sole examination of female crime via a sexual lens. The existing criminological theories, including biological, psychological, control, differential association, conflict, labeling, social disorganization, and social learning theories, have mostly originated from and been validated on male subjects, with a primary emphasis on male victimization. Feminist criminologist Carol Smart argues that a deficiency in comprehension has resulted in the formulation of erroneous policies pertaining to the treatment of women. According to Hedderman, criminogenic needs refer to human features or situations that are connected with reoffending and have the potential to be modified. Accordingly, one of the prevalent elements seen is a strong affiliation with and identification with antisocial or criminal role models. Strained familial ties, characterized by the presence of elevated degrees of reliance on substances such as drugs and alcohol, Experiencing financial challenges, unemployment, little educational achievement, and possessing inadequate cognitive abilities.

The similarity of wants among males does not always imply the similarity of needs among women. In summary, it can be said that the expression of these disparities often leads to stereotypical and insufficient programming, making the experience of imprisonment significantly challenging for women. Consequently, they are left entirely unable to provide for themselves or their families upon their release.

The Human Rights of Women Prisoners and Their Children: An International Perspective

Prior to the occurrence of the world wars and the establishment of the United Nations, the official acceptance of the notion of human rights was absent on a global scale. Various measures were

implemented to guarantee these rights to all persons, including women and children. The establishment of minimal standards for prisoners, including women prisoners, as a component of international law, occurred only in 1955.

Human Rights of Women Prisoners

In the 19th century, Elizabeth Fry brought attention to the need of implementing targeted policies that address the unique requirements of incarcerated women. She was the first advocate for criminal reform who dedicated her efforts exclusively to addressing the predicament faced by incarcerated women. The foundation of her principles towards criminal reform was rooted in the values espoused by the Society of Friends. The Quakers placed significant emphasis on using personal and paternalistic methods of correction, with religion serving as their primary tool for effecting change. The individual in question declined to embrace the conventional symbols of wealth and instead embraced the rigorous tenets espoused by the Society of Friends. The individual's religious and charitable endeavors inside their organization served as a significant basis for the punitive changes that ultimately resulted in her global reclamation efforts.

Elizabeth suggested implementing a strategy of "vigilant and continuous monitoring" in response to the shift in attitude. The proposal put up is the establishment of correctional facilities specifically designed for female inmates. These facilities would have a layout including individual cells, communal areas, and outdoor spaces, strategically arranged to enable supervising officers to maintain constant visual contact with the convicts throughout their work hours, recreational periods, and even during the night. Additionally, she espoused the notion that the incorporation of ongoing productive work inside jails is a fundamental characteristic, as it yields both moral and material advantages. In her assertion, she argues that a jail cannot be deemed comprehensive unless it provides opportunities for labor, which are integral to a rehabilitative approach and constitute a significant component of the punitive framework. The speaker consistently emphasized the significance of productive labor for incarcerated women.

The first enactment of a legal document establishing basic requirements to be adhered to by the State Parties occurred in 1955. The importance of addressing the distinctive challenges faced by women inmates and finding solutions to these issues was underscored in several places, including the "Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders 1982." This congress recommended that nations acknowledge and address the unique difficulties experienced by women in jail. Furthermore, the United Nations' "The Body of Principles for the

Protection of all Persons under Any Form of Detention or Imprisonment, 1988" also safeguards the rights and unique circumstances of women, namely those who are pregnant or breastfeeding.

Furthermore, the "Vienna Declaration on Crime and Justice: Meeting the Challenge of the Twenty-First Century" (2000) highlights the commitment of nations to formulate action-oriented policy proposals that address the specific requirements of women inmates.

The 2004 resolution by the Commission of Human Rights, titled "Human Rights in the Administration of Justice, Specifically Juvenile Justice," emphasized the importance of exercising caution when addressing the unique circumstances faced by incarcerated women. The resolution acknowledged the heightened vulnerability of these women to various forms of violence, abuse, injustice, and humiliation. Consequently, it called upon all nations, human rights organizations, and non-governmental entities to earnestly address the concerns surrounding female prisoners and their children.

The Developing Legal Protections for Children of Incarcerated Mothers

It is incumbent upon society to assume the responsibility of safeguarding the well-being and best interests of children, given their status as the most susceptible segment of the population and their pivotal role in shaping the future. Nevertheless, children that have moms who are incarcerated are often overlooked in comparison to other groups. The growing phenomenon of prisonization poses a significant threat to the well-being and welfare of children who are reliant on incarcerated parents. The complex issue that arises when considering the imprisonment of a mother is whether to choose for the separation of the child from the mother or to let the kid to remain in the mother's company during her incarceration. Complex challenges occur when incarcerated pregnant and lactating women are confined, since the newborn infants are particularly vulnerable to the detrimental consequences of imprisonment from the earliest stages.

In order to safeguard the well-being and rights of individuals who are in the developmental stage of childhood, it is imperative to implement measures aimed at ensuring their protection. The Convention on the Rights of the Child was approved by the United Nations General Assembly and made available for signing on November 20, 1989, coinciding with the 30th anniversary of the Declaration of the Rights of the Child in 1959. Furthermore, a United Nations Committee on the Rights of the Child was formed to oversee and adjudicate disputes pertaining to children's rights. The Convention primarily acknowledges the kid as an individual who is under the age of

eighteen and has inherent rights. The enforcement of these rights is to be carried out by the various nations. The treaty grants several rights to children from the moment of their birth. While the treaty does not explicitly address the rights of children with incarcerated mothers, it ensures that all children are entitled to the same rights without any kind of discrimination.

Women Prisoners' Human Rights and the Impact on their Children in India

Following India's attainment of independence and its subsequent membership in the United Nations, several measures pertaining to the welfare of women and children were already included into the country's Constitution, namely under the Fundamental Rights and Directive Principles of State Policy. Repeatedly, the court has interpreted the provisions of the Constitution to expand the scope of rights granted therein, including the extension of these rights to incarcerated individuals. Prior to the enactment of the Prisons Act in 1894, certain provisions were already in place to address the treatment of women inmates. These laws included measures such as the separation of women prisoners, conducting searches by female matrons, and the restriction of males from entering female wards or barracks. The implementation of the Model Prison Manual in 2003 brought out several rules and suggestions for prison managements to adhere to. These standards were intended to be included into existing jail manuals.

The Constitutional Status of Women Prisoners in India

The Constitution of India does not explicitly provide distinct assurances to female inmates. Nevertheless, the Indian Constitution confers to women the position of equality. The framers of the Indian Constitution shown a significant level of deliberation in their efforts to safeguard and advance the rights of women and children. The Preamble of the Indian Constitution effectively encapsulates the goals and ambitions of the Indian people. One of the fundamental principles that is highly valued is the concept of "equality of status and opportunity". The Constitution of India, as outlined in Article 14, ensures the provision of equal protection of laws to women in India. Additionally, Article 15 explicitly outlaws any kind of discrimination based on sex. However, Indian women convicts continue to encounter several challenges. Article 21 of the Constitution of India delineates a range of rights specifically designated for incarcerated women, including but not limited to the following: the entitlement to reside in protective homes, the entitlement to receive free legal assistance, and the entitlement to a prompt and expeditious trial process. Female incarcerated individuals has the entitlement to a prompt and expeditious legal proceeding. The Supreme Court has established that there exists an unquestionable entitlement to a prompt trial for those who are awaiting trial and have not yet been convicted. The right to be protected from cruel

and unusual punishment, the right to a fair trial, the right to be protected from custodial brutality and death in police lock-ups, and the right to live a life with human dignity are fundamental human rights. The Constitution of India also provides individuals with rights pertaining to solitary incarceration, handcuffing, and bar fetters, as well as safeguards against torture.

The Protection of Human Rights Act was enacted by the government of India in 1993, establishing the National Human Rights Commission with the objective of promoting and safeguarding human rights. Article 4 of the Constitution of India delineates the Directive Principles of State Policy, which serve as guidelines for the State to ensure the provision of economic and social rights to its citizens in a prescribed way. India has also accepted several international conventions and human rights instruments, so demonstrating its commitment to ensuring the equal rights of women.

The challenges encountered by incarcerated women

The current state of several jails in India is unfavorable, characterized by poor conditions that are degrading and infringe upon the residual rights of incarcerated individuals. Throughout the course of time, correctional facilities have transformed into environments characterized by limited public scrutiny, whereby circumstances of extreme deprivation and even acts of brutality have been pervasive. The potential for causing harm and unfair treatment towards incarcerated individuals has consistently existed inside these enclosed facilities. Regrettably, the state's oversight of daily operations inside these institutions has been reduced to a mere ceremonial procedure, and the monitoring of society is noticeably lacking. Numerous proposals have been put forward by authoritative agencies and the highest court in order to enhance these circumstances. However, a significant portion of these recommendations has yet to be implemented.

- a) The number of women jails in India is inadequate. According to the latest statistics provided by the National Crime Records Bureau 2021 (NCRB), a number of Indian states are confronted with a dual challenge of insufficient capacity and inadequate facilities to house female inmates and under-trial offenders inside their correctional systems.
- b) The female incarcerated population in India lacks adequate housing and recreational facilities. There is a deficiency of essential amenities for mothers and their offspring. Female incarcerated individuals also exhibit visible fear towards the correctional personnel. There exists significant potential for substantial improvement across all domains, with a special emphasis on the need for prison personnel to cultivate a mindset that prioritizes the recognition and protection of the human rights of female inmates.

- c) Sexual assault is a significant challenge for incarcerated women. Numerous accounts exist detailing instances of severe mistreatment inflicted against female inmates while in jail. According to the Asian Centre for Human Rights (ACHR), custody rape continues to be regarded as one of the most severe manifestations of torture inflicted against women by law enforcement officials, with instances of such sexual violence occurring periodically.
- d) A significant issue that arises among the population of female convicts is a lack of knowledge and understanding about legal regulations and procedures. In the study titled "Progress of the World's Women," authored by the Assistant Secretary-General of United Nations Women, it is said that women who lack formal education have a limited understanding of the legal system and their entitlements.

According to section 437 of the Criminal Procedure Code (Cr.P.C), women may be granted bail even in non-bailable situations. However, it seems that women are not availing themselves of this privilege owing to their lack of knowledge or awareness. In cases involving non-bailable crimes, the granting of bail is not an inherent entitlement of the accused individual. Section 437 of the Code of Criminal Procedure (Cr.P.C) encompasses the stipulation pertaining to bail in instances of non-bailable crimes, whereby the court may use its discretion in granting or denying such bail. However, there is a condition attached to this particular regulation that excludes women from its application and gives the court the authority to provide bail to a woman, regardless of the severity of the offense.

Concluding remark and Suggestions

There has been a consistent rise in the number of women being incarcerated in India. The lives of women in jail, the majority of whom are awaiting trial, are complicated by a variety of problems. The aim of correctional facilities to rehabilitate inmates is not being met adequately. Therefore, there is an immediate need to have an understanding of the challenges faced by women incarcerated, recognize the rights of these women, and guarantee that these rights are respected. Although there are several progressive regulations aimed at promoting the well-being and equitable treatment of incarcerated individuals, including women, the implementation of these policies is not always effectively realized. Women encounter various challenges pertaining to the absence of female personnel, inadequate and congested housing, substandard sanitation and hygiene facilities, insufficient provision of services to address their physical and mental health requirements, inadequate nutrition, limited access to educational opportunities, and frequently inaccessible skill and vocational training programs. A significant number of women living with

their children encounter a lack of adequate educational, health, and recreational provisions necessary for the optimal upbringing of their offspring. The aforementioned challenges, in conjunction with the absence of legal assistance inside correctional facilities, restricted communication with the external society, and the elevated occurrence of violence perpetrated by both prisoners and officials; intensify the circumstances faced by women. The process of reintegrating individuals into society upon their release poses a significant barrier.

It is necessary that prison administrators and other personnel responsible for the supervision and management of female inmates undertake compulsory gender-sensitive training. This training will enhance their ability to make informed and equitable choices pertaining to women inside the prison system. It is important for individuals to exhibit sensitivity towards the specific requirements of women from minority populations, handicapped women, and foreign nationals, in order to avoid any kind of discrimination against them. It is essential to establish an authentic and proactive system for addressing grievances in order to effectively mitigate the infringement of prisoners' rights inside correctional facilities, while also providing a platform for constructive communication between incarcerated individuals and the prison administration.

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