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# Understanding Mental Health Care Needs of Women Prisoners with special reference to Indian Prisons Set-Up

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## ABSTRACT

*Women make up a rising portion of the global prison population, which presents a special challenge in front of correctional authorities to tackle the very basic physical and mental health care needs of them that is usually seen as a neglected subject in the whole catena of reformation and rehabilitation of prisoners. The mental health status of incarcerated women is affected by a myriad of factors that range from the physical conditions in which they live to the culture of the prison system and the systemic neglect they experience from within the legal system. Mental health problems among women prisoners can be in the form of distress, depression, anxiety or any other neurotic disorder and the main reasons behind all these issues especially in Indian prison system ranges from unfulfilled psycho-social needs to substance use addictions, hostile attitude of the prison administration towards mental health needs, poor sanitary conditions and lack of familial affection due to isolation. Therefore in order to integrate the incarcerated women into the community life after their release, its very pivotal that they should remain both physically and mentally sound and this can only be achieved through the combined efforts of the three main organs of government in India in light of the new model prison manual, mental health care act 2017 and the upcoming Model Prisons act of 2023 which needs effective and timely implementation in its letter and spirit.*

**Keywords:** *Incarcerated Woman, Prisoner, Mental Health, Mental Illness, Convict.*

## I. INTRODUCTION

One of the crucial elements of India's criminal justice system (hereafter CJS) is the prison environment. The colonial era is where the Indian CJS got its start. Following the '1857 Sepoy Mutiny' against the East India Company, the British Crown established 'direct authority' in the Indian-occupied region, which was followed by legislative and administrative changes. With the passage of the Indian Evidence Act in 1872 and the Indian Penal Code (IPC) and Criminal Procedure Code (CrPC) in 1861, one of these developments that stood out was the creation of

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a uniform CJS. The Police Act (1861), the Indian High Courts Act (1861), and the Prisons Act (1894) established the framework for enforcing these pieces of legislation. In spite of the fact that these laws continue to serve as the CJS's skeleton in post-independence India, there is little indication that the system's core principles of punishment and deterrence have given way to ones of correction and rehabilitation.<sup>2</sup> As of 31<sup>st</sup> December 2021, there were a total of 1319 prisons in the country out of which 32 were women jails with an occupancy rate of 57%. Furthermore In India, there were only 15 States/UTs with women's prisons (32 women's prisons), with a total capacity of 6,767 inmates. As of December 31, 2021, there were 1,650 women convicts and 1,867 children. Among these women prisoners, 1,418 were under trial detainees accompanied by 1,601 children, while 216 were convicted detainees accompanied by 246 children (Prison statistics 2021)

Now as far as women jails in India are concerned, Women jails are particular prisons that house solely female inmates, hence the name "women jail." At the sub divisional, district, and central (Zone/Range) levels, there may be a women's jail. A Total of 3,808 inmates—3,803 females and 5 transgender—were housed in various women's prisons across the country compared to a total prisoner capacity of 6,767 as of December 31, 2021. The jails in Tamil Nadu had the most inmates (574) followed by those in Delhi (559), Rajasthan (453) and Uttar Pradesh (309). However it is also a fact that As of the 31<sup>st</sup> of December 2021, a total of 22,918 female detainees were lodged in various prisons at the national level, of which only 16,6% (3,803) were lodged in Women Jail. Approximately 84% of all female detainees (19,115) were housed in other Jails. While woman prisoners continue to be a miniscule minority in all parts of the world, yet the female prison population is continually growing faster than the male prison population on every continent. And yet Accommodations are frequently insufficient, which is made worse by the fact that most prisons are extremely overcrowded. There aren't enough bathrooms, toilets, or other necessities for sanitation and hygiene. A major issue is the inadequate supply of water and menstrual hygiene products. Although prison and correctional institutions have undergone rapid changes over the course of years despite these warnings, social work interventions have emphasized the plight of female prisoners. Although the equality and dignity of all women are firmly enshrined in Article 14, Article 15 (1), Article 39 (a), Article 39 (d), and Article 51A(e) of the Indian Constitution, the concept of human rights plays a minimal role in the day-to-day functioning of jails, and incarcerated women are branded as 'bad women' who deserve poor treatment. Both as criminals and as victims of crimes, women are imprisoned in the criminal

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<sup>2</sup> Raghavan V. & Mishra S., The influence of social work within the Indian criminal justice system. In Chong M. D & Francis A. P. (Eds.), *Demystifying criminal justice social work in India* (pp. 3–32). SAGE Publications(2017)

justice system. Millions of prisoners experience deprivation and prejudice despite constitutional protections for opportunity and civil rights. However, it is clear that prison administrators in India still have a ways to go before implementing their suggested guidelines in practice to guarantee good health conditions for the female inmates housed in the jails.<sup>3</sup>

## **II. IMPORTANCE OF ADDRESSING THE BEHAVIOURAL GENDER ISSUES IN PRISON SET-UP**

Women typically lead protected lives, but when they violate the law and are imprisoned, they find it extremely challenging to adjust to the prison environment. Women in prison are separated from their family and acquaintances. The physical and mental health requirements of women differ from those of males. Generally majority of the prison inmates are males and the prison environment shapes according to their very needs and do not cater to the needs of women prisoners. This disadvantage and discrimination which women faces inside prisons get amplified when they are released from prisons as then they faces the stigma and backlash of society. Women inmates must only be watched over by female officers, according to United Nations on Human Rights Rule 53 of the Standard Minimum Rules for the Treatment of inmates, because they are commonly the targets of physical and sexual abuse in prisons. Male staff members continue to have unrestricted physical and visual access to female inmates. Male staff members

Occasionally conduct frisk searches on female prisoners without hesitation. Male staff members occasionally conduct frisk searches on female convicts without hesitation. In certain cases, prison staff has encouraged and condoned verbal harassment and intimidation of female inmates who disobey their orders.<sup>4</sup> According to studies, women prisoners had a higher prevalence of syphilis than the overall jail population. HIV infection is also prevalent. Menstrual difficulties, stress, and depression are common among female convicts. It is possible that the woman discovered her pregnancy only after being detained, in which case staff who work with incarcerated women counseled her to abort her pregnancy. Women inmates are also unable to properly care for their small children while in detention. Sometimes Women who inject drugs are especially vulnerable because they share syringes and needles. They may have engaged in sex work or had unprotected intercourse with their drug companions. Women's cultural and

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<sup>3</sup>Math SB, Murthy P, Parthasarathy R, Nuveen Kumar C, Madhusudhan S. *Mental health and substance use problems in prisons: Local lessons for national action*. National Institute of Mental Health Neuro Sciences, Publication Bangalore(2011)

<sup>4</sup>Town head L; Women in Prison: A Commentary on the UN Standard Minimum Rules for the Treatment of Prisoners (NGO) 2008, Quaker United Nations Office (QUNO). Available online at [http://www.peacewomen.org/assets/file/Resources/NGOZHR\\_Prisoners\\_QUNO\\_2008.pdf](http://www.peacewomen.org/assets/file/Resources/NGOZHR_Prisoners_QUNO_2008.pdf) Accessed on 16 June 2023

societal circumstances may prevent them from exercising control over their sexual life. The majority of women are imprisoned for non-violent offenses such as property, dowry-harassment, drug-related offenses, prostitution, bar dancing, and so on. Many women serve short sentences, which usually indicate a high turnover rate. It has been discovered that regular gynecological consultations, treatment of sexually transmitted diseases, family planning and counseling services oriented to women's needs, care during pregnancy in appropriate accommodation, and care for children languishing in jail with their mothers, including those born to HIV-infected mothers, are not addressed properly in almost all jails in India.<sup>5</sup> Often from underprivileged origins, women in jail have histories of physical and sexual assault, spousal abuse, alcohol and drug misuse, and poor health care prior to being imprisoned. According to research, female inmates experience mental health issues to a much greater extent than both the general community and male inmates. The state of prisons is appalling despite numerous laws and commissions. And nothing mainly is done to address issues such as health and hygiene, psychological and emotional issues, rehabilitation, re-socialization and acceptance of incarcerated women in society. Imprisonment of mother along with her child is also a problematic issue that needs to address from the constitutional perspective.

### **III. INTERNATIONAL INITIATIVES TO ADDRESS THE MENTAL HEALTH CARE NEEDS OF WOMEN PRISONERS**

It is true that people with mental disorders are among the most disadvantaged and underprivileged members of society, especially when compared to other marginalized groups. There is a long and tragic list of ways in which these people have been used and mistreated. And when the person with mental illness is inevitably detained in prisons without access to adequate care, the whole situation becomes a disaster.<sup>6</sup> As a result, various global health policies and legislation were created in light of human rights norms and associated conceptions of fairness and justice to address these historical and ongoing issues. Some of which especially in reference to women prisoners are as follows

**NELSON MANDELA RULES:** The revised Standard Minimum Rules for the Treatment of Prisoners, which were enacted in 1955, were updated in a significant way by the Nelson Mandela Rules of 2015. The Bangkok Rules for Care and Protection of Women Under Custody were also taken into account in the numerous revisions and amendments made to the UNSMR

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<sup>5</sup>P. Pandey and Awadhesh K. R. Singh; *Women prisoners and their dependent children: The Report of the Project Funded by Planning Commission, Government of India, New Delhi (Serials Publications) 2006.*

<sup>6</sup> Lawrence O. Gostin and Lance Gable, *Global Mental Health Changing Norms, constant Rights*, 9 *Geo. J. Int'l Aff.* 83 (2008)

for the treatment of prisoners by the United Nations Office on Drugs and Crime, Inter-Governmental Organizations, civil society organizations, professional freelance consultants, and experts in related fields.<sup>7</sup>

**THE BANGKOK RULES 2011:** The Bangkok Rules, also referred to as the UNSMR (United Nations standard minimum rules for treatment of women prisoners), are the guiding text that establishes criteria for the care and protection of women who are in any type of custody. The Bangkok Rules supplement the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) in relation to the treatment of women prisoners and alternatives to imprisonment for women offenders, rather than replacing them. The majority of the rules in the Bangkok Rules further clarified existing provisions in the Standard Minimum Rules for the Treatment of Prisoners (NMR) and the Tokyo Rules in the field of alternatives to imprisonment for women offenders. The Bangkok Rules state that to protect the mental health of women in jail, specialized, gender-sensitive care, comprehensive healthcare, and rehabilitation programs must be made available. To handle mental health issues and recognize the mental condition of women in prisons, prison staff has to receive enough training. Despite the fact that India has a National Mental Health Programme, mental health care and treatment programs vary from country to country and even within India, from state to state. When the Indian scenario is examined in terms of the detention and treatment of mentally ill under-trial convicts, the Supreme Court of India issued guidelines in accordance with the Bangkok norms, which read as follows: Health-care services [Rules 22–26 of the Standard Minimum Rules for the Treatment of Prisoners] (a) Mandatory medical screening upon admission [Supplements Rule 24 of the Standard Minimum Rules for the Treatment of Prisoners] for all jail detainees.<sup>8</sup> Rule 6 of Bangkok rules The health screening of women prisoners shall include comprehensive screening to determine primary healthcare needs, and also shall determine (b) Mental healthcare needs, including post-traumatic stress disorder and risk of suicide and self-harm. The NMR and Bangkok rule clearly direct the prisons to screen inmates for mental health care needs which included post-traumatic stress, the risk of suicide and self harm, drug dependency and for mental health problems suffered prior to incarceration.

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<sup>7</sup> Kasey McCall-Smith. “United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).” *International Legal Materials*, vol. 55, no. 6, 2016, pp. 1180–205. *JSTOR*, <http://www.jstor.org/stable/10.5305/intelegamate.55.6.1180>. Accessed 20 June 2023.

<sup>8</sup> Marie Claire Van Hout and others, ‘Women’s right to health in detention’: United Nations Committee Observations since the adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), *Journal of Human Rights Practice*, Volume 15, Issue 1, February 2023, Pages 138–155

#### **IV. RIGHTS OF WOMEN PRISONERS IN INDIA AND ITS RELATED LAWS**

The various statutes that have a bearing on the regulations and management of prisons which includes female institutions are (i) The Indian Penal Code, 1860,(ii) The Prisons Act, 1894, iii) The Prisoners Act, 1900,(iv) The Identification of Prisoners Act, 1920,(v) Constitution of India, 1950,(vi) The Transfer of Prisoners Act, 1950,(vii) The Representation of People's Act, 1951,(viii) The Prisoners (Attendance in Courts) Act, 1955, (ix) The Probation of Offenders Act, 1958,(x) The Code of Criminal Procedure, 1973,(xi) The Mental Health Act, 2017,(xii) The Juvenile Justice (Care & Protection) Act, 2015,(xiii) The Repatriation of Prisoners Act, 2003,(xiv) Model Prison Manual (2003) and the very newly formed Model prison manual of 2016 along with the recent model prisons act of 2023. All these laws somehow imbibe the notion that imprisonment does not bid farewell to the rights of women prisoners and that also includes the mental health needs of female prisoners as well.

The classification of inmates and their placement in various prisons is an important policy decision. Male and female pre-trial detainees have the right to be lodged separately from male and female convicts. All female convicts have the right to be housed separately from all male prisoners, either in separate prisons or in a separate facility within the same prison complex.<sup>9</sup>

As per Section 24 of the Prisons Act 2023 A female prisoner admitted to jail may only be inspected for prohibited items and injuries by a matron designated for the jail under the direction of the medical officer, with strict regard for decorum and out of the view of all male officers and prisoners. Even if she is transported to a hospital outside the jail, every female inmate has the right to be examined and treated by a female physician and assistant, whenever practicable.

Apart from that the model prison manual of 2016 also contain provisions under chapter 26 to address the mental health care needs of women prisoners such as female inmates needing care and treatment for mental diseases shall not be admitted in prison instead they shall be kept in separate enclosures for female patients at the mental health institution or in any other facilities under the supervision lady medical officer and mental health professional. in addition when transferring mentally ill woman prisoner a female warden shall accompany the police escort provided to such prisoner, families of such prisoners shall be found out and shall be informed about their mental status and whereabouts. Further initiatives shall also be taken through appropriate agencies to ensure regular psychiatric treatment after release and provisions of social psychiatric care wherever it is deemed to be necessary. The Supreme Court issued guidelines about women inmates and their children in the case of R.D. Upadhyay v. State of

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<sup>9</sup> State of Maharashtra vs Sayyed Noor Hasan Gulam Hussain 1995 Cr.L. J. 765

Andhra Pradesh (A.P.) & Ors. Some of them state that a child of a female prisoner shall not be considered as a pre-trial convict when incarcerated alongside his mother. As a matter of right, such a child is entitled to food, shelter, medical treatment, clothes, and education. Women inmates with children should not be housed in sub-jails since they are not equipped to house little children. The confinement of children in packed barracks with women criminals, those on trial, and offenders charged with all types of crimes, including violent crimes, is especially destructive to their personal development. As a result, the youngsters deserve to be withdrawn from such situations as a matter of importance. In the case of *Accused X vs State of Maharashtra* Justice N.V. Ramana while delivering the Judgment held that prisons could be difficult places to be in. Various aspects of a prisoner's life, like overcrowding, violence, isolation, and absence of familial affection, could affect their mental health. The three judge bench held that post conviction; mental illness could be a mitigating factor while deciding the cases of commutation of death sentence. The court also directed the state governments to work towards building a robust mental health infrastructure in prisons.<sup>10</sup> Under the Indian mental health care act 2017 it has been provided that A prisoner with a mental illness may only be transferred in accordance with the guidelines established by the Central Government or State Government, as applicable, to the psychiatric ward of the medical wing of the prison, to a mental health establishment created in accordance with sub-section (6) of section 103, or to any other mental health establishments inside or outside the State. and the mental health facility mentioned in sub-section (7) of section 103 must adhere to the minimal requirements and guidelines listed in the schedule some of which are as follows-

1. The identification of individuals with mental health issues should be prompt and accurate.
2. screening of all prisoners at the time of admission, including the following:
  - a. Required physical and mental condition examination
  - b. Screening questionnaire for substance use
  - c. Urine testing for commonly abused substances
  - d. Periodic random urine substance testing
3. Identification of individuals with severe mental illness and provision of treatment and follow-up for this population.
4. Antipsychotic medication, antidepressant medication, mood stabilizers, and

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<sup>10</sup> AIR 2019 SC 241

anticonvulsant medication, among others.

5. The availability of psychosocial interventions for inmates with various mental health issues.
6. Protocols for coping with prisoners with suicidal tendencies, behavioral issues, and mental illness-related crises, as well as prison life.
7. Rehabilitative services for mentally unwell inmates. Specific attention should be paid to the aftercare requirements of prisoners with mental illness, including the provision of medication after release, the education of family members, measures to ensure treatment compliance and follow-up, vocational arrangements, and shelter arrangements for those without families.
8. Implementation of the National Mental Health Program within the main prison.
9. Addressing substance use disorders among female prisoners.

## **V. PROBLEMS HINDERING THE ENFORCEMENT OF RIGHT TO MENTAL HEALTH OF WOMEN PRISONERS**

The number of women and girls incarcerated globally is rising. There is strong evidence that mental health issues are prevalent. There are many different ways to approach these issues, including mental epidemiology and gender-sensitive comprehension and intervention. Given the vulnerability and trauma histories of women prisoners, prison conditions and their needs are complicated and call for care that is gender-aware. Due to a paucity of employees, male staff members frequently take on the responsibility of looking after female detainees, which is not ideal. Gender-specific services are required due to the presence of female inmates; these services should be delivered by female employees. Priority should be given to hiring female inmates for prison jobs. One of the main issues affecting prisons in India is overpopulation. In 2015, the nationwide average occupancy was 114.4%. Prison overcrowding has been observed in states/UTs like Dadra and Nagar Haveli, Chhattisgarh, and Delhi with rates of as high as 276.7%, 233.9%, and 226.9%, respectively. Overcrowding puts additional strain on the jails' already meager resources and is directly related to a shortage of room for inmates.<sup>11</sup> Despite state regulations, the physical and mental health of prisoners frequently deteriorates. In many instances, hospitals lack female wards and female Medical Officers, particularly gynecologists. Mental health concerns are frequently undervalued, and women with mental illness are frequently lodged in prisons due to a lack of other suitable facilities. Incidence of violence

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<sup>11</sup> SC Order in Re - Inhuman Conditions in 1382 Prisons dated 2th May 2017. W.P.(C) No.406 of 2013

including sexual violence by inmates and authorities has been reported from across the country. However, official reports remain underestimated due to fear in prisoners of retaliation as they are forced to stay in the same place as their perpetrators. During their trips to prisons, the NHRC and the National Commission for Women discovered that many of them lacked waiting areas and visitor facilities, or they were overcrowded and noisy, which further restricted prisoners' access to these services. Sometimes ladies cannot use separate visiting rooms. The general waiting areas are dominated by male inmates, making female detainees feel particularly insecure there.<sup>12</sup>

## **VI. POSSIBLE CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS**

Without hesitation, it can be said that, given India's current situation, the number of female offenders is rising far faster than the number of male offenders. As a result, Indian jails, which were originally designed largely with male criminals in mind, must now also house female inmates. Women prisoners in India are forced to live terrible, sick, and pitiful lives when incarcerated due to the lack of room in female prisons relative to the number of inmates and the absence of women-friendly infrastructure in jails. Prison administrations have utterly failed in practically every area, whether it is access to good sanitary facilities, competent pregnancy care, or the availability of skilled medical staff to address female-specific health issues as well as subsequent mental disorders. The situation for Indian female prisoners' health is dismal despite numerous government legislation and initiatives, coupled with the unwillingness of jail administrators and funding issues. On the other hand, the Indian Government has updated the Prison Manual where various good initiatives have been done to secure proper health facilities in light of the findings of several surveys addressing the health conditions of women prisoners. Since frequent physical examinations are carried out by the jail staff in accordance with government directives, conditions in Indian prisons are gradually becoming more normal. Additionally, facilities for caring for pregnant women and the elderly have substantially improved since the past. Even though it is known that female criminals are more likely than male offenders to have mental disorders, depression, and suicide thoughts, the convicts' mental health is still being neglected. Situations are getting better day by day in female prisons of India in terms of improved medical facilities as well as frequent physical check-ups and proper care of each of the inmates having any kind of physical problem. However, mental illness needs to be the focal point now considering the fact that it has often been neglected due to a lack of infrastructure and appropriate resources.<sup>13</sup> Women inmates are more prone to mental disorders,

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<sup>12</sup> SC Judgment in Sunil Batra vs. Delhi Administration dated 20th December 1979. 1980 SCC (3) 488

<sup>13</sup> Kumara N. Socio economic profile of women prisoners. Language in India 2009; p.9. Available online at <http://>

depression, and suicide attempts due to overcrowding, incarceration at a distance from their actual domicile, and the resulting isolation. It has also been determined that the authorities have failed to maintain sanitation, resulting in illness and the spread of disease.

In order to enhance the mental health situation in prisons, it would be highly beneficial to implement regular counseling sessions. Moreover, frequent gatherings with relatives will aid in reducing their fear of exclusion and maintaining their mental health. For the development of cleanliness and hygiene within a women's jail, adequate sanitation is necessary. It is required to provide sterile sanitary napkins to female detainees in order to maintain menstrual hygiene. The wash basin must be cleansed promptly, and each cell must have access to clean, potable water.<sup>14</sup> As far as suggestions are concerned it's very pivotal that the female prison facility must have a female doctor and female guards in control. Inmates must be routinely screened for physical and mental health issues and given treatment as soon as possible. Given the prevalence of mental health illness among female convicts, mental health care and counseling are required. Effective planning for mental health treatment following release is critical, especially for women suffering from serious mental illness. Women with substance abuse issues should have access to a de-addiction program. Involvement of family members in counseling is critical to the health of female convicts. Adequate opportunities for employment and entertainment must be offered. Adequate preparation for post-release livelihood, especially for women without family support, is critical. Aggression, violence, self-injurious behavior, impulsivity, sexual activity, and substance use are all high-risk behaviors that must be addressed with suitable strategies. Lastly Regular contact with inmates will allow for the rapid diagnosis of issues, the rapid development of workable remedies, and the rapid alleviation of distress. Staff in correctional facilities should be educated in recognizing mental illness and responding appropriately in crisis so that women prisoners must feel safe, be treated with respect and dignity and need to be assisted towards developing insight into their offending behavior.

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<sup>14</sup> Mohanty, Muktikanta. "BEHAVIOURAL SYNDROME OF WOMEN PRISONERS IN INDIA." *The Indian Journal of Political Science*, vol. 74, no. 4, 2013, pp. 639-48. *JSTOR*, <http://www.jstor.org/stable/24701160>. Accessed 20 June 2023.