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The Gender Perspective

Gender Justice in the Indian Penal System



Dr. Sindhuja Iyengar

Political Scientist and Strategist, Bengaluru, India

The Indian Penal System has been attempting to evolve from retributive and vindictive forms of justice to creating a reformatory environment for prisoners. *The Union Ministry of Home Affairs 2009*, directed the Prison and Home departments of all States and Union Territories to take effective measures to improve the reformatory elements of their prison environment in the light of recommendations made by prison reform committees and court pronouncements. A significant inclusion in these recommendations were reforms to meet the special needs of women prisoners in an incarceration system that is primarily designed for male inmates.

However, a *2018 Report on Women in Prisons: India by the Union Ministry of Women and Child Development* identified that even the fundamental recommendation for separate prisons for women was still far from realisation, as over 80 per cent of women prisoners continued to be housed in female enclosures of general prisons. Urgent reforms are also required vis a vis the insufficient numbers of female prison staff; disproportionately higher overcrowding of female than male prisons; inadequate preconditions for menstrual sanitation and hygiene; inadequate or non-provision of special diet for pregnant and lactating mothers, and the children of women inmates residing with them; and the lack of facilities for reproductive and other gender-specific health concerns. There also exists a serious need to establish and effectively run mechanisms for the redressal of grievances on matters of safety, including sexual violence by prison officials and other prisoners.

Moreover, a system of reformatory justice requires that prisoners be made ready for reintegration into ordinary society following their release from incarceration. To this end, particular attention must be paid to social integration by reviving engagement with family, friends, and the

neighbourhood community; and economic integration by securing stable paid work that is non-exploitative of the women's prison past and related stigma. Here, social integration can be an uphill task: Due to disproportionate social stigma, women prisoners get far fewer calls and visits from family than male prisoners do, resulting in the former having more fragile social bonds at the time of release than the latter. The lack of regular visitors is exacerbated by the fact that the low numbers of prisons housing women result in their being assigned jails that are far from home. Presently, state institutionalisation of integration efforts is wanting, with sparsely available assistance from non-governmental organisations (NGOs) being the women's only recourse to limping back to a normal life. The unavailability of post-incarceration support can trigger recidivism, which would defeat the reformatory nature of the justice system.

A key component of socio-economic rehabilitation is to train the women in productive, gainful, and socially respected vocations during their incarceration. This should be supplemented by training in life skills such as the management of personal budgets and bank accounts, savings and small wealth creation, and the leasing and daily management of the property. To enable these, classes for functional literacy in language and mathematics should be made easily accessible. Short-duration and under-trial prisoners should be permitted to avail the classes even post-release so that petty criminals have equal access to rehabilitation prospects, thereby mitigating recidivism of lesser crimes. Since women are known to suffer disproportionate consequences for their anti-social behaviours, those engaging in petty crimes cannot be treated at par with men engaging in the same. Instead, all women prisoners – both convicts and undertrials, of both small and large crimes – should be treated as being equally vulnerable to the retributive instinct of society, and should be provided equal opportunities for character and lifestyle reformation to safeguard themselves.

Protection of the future of children housed with their imprisoned mothers should also be an urgent state priority. Prisons present an environment that is a sudden drastic change from that at home; this necessitates that women with children should be housed in jails that are equipped to minimise the culture shock that the children experience on entry. Prisoners who are pregnant during their incarceration should be permitted to deliver their children in medical facilities outside the jail premises, and the children's birth certificates should not record the jail as being the place of birth. Further, every jail should provide a creche to enable the mothers to freely participate in educational and vocational activities. These common recommendations find support in the letter of the *Model Prison Manual 2016*, but not in its adequate implementation.

Indian society strongly links a woman's sense of honour with the non-violation of her body. Hence, the encroachment of the woman's sense of bodily dignity in a prison environment becomes a further cause of social stigma against released female prisoners. To prevent this, it should be ensured that routine conducts of a bodily nature such as the use of bathrooms and toilets, medical checks, and body searches do not accord any scope for exploitation of the woman's vulnerability. Jails should provide screened spaces for a woman to conduct her

toiletries in private. An oft-repeated suggestion is that medical checks and body searches should be conducted by and in the presence of only female staff. Cavity searches can be avoided unless imperative, body screening technology can substitute unclothed manual checks, and strip searches can be conducted in two distinct steps wherein the upper and lower body is examined one after the other in order to avoid complete nudity at a time. Confidentiality of medical reports, particularly that of reproductive history and sexual trauma, should be respected and preserved.

To maximise the reformatory readiness of women at the time of release from incarceration, counselling that is customised to the special needs of women should be provided. Such counselling may be extended to the women's families to prepare them to accept her release and reintegration in a healthy manner. Each released woman can be assigned an NGO that will follow up on her case to ascertain her well-being post-release.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (*The Bangkok Rules*) adopted by the United Nations General Assembly in 2010 may also be consulted toward the above issues and reforms. This will enable India to embrace gender justice in its penal system that is at par with international standards and in tune with the country's ground realities.

To enable holistic gender justice in our penal system, the special sensitivity being shown to women prisoners should be extended to transgender prisoners.
