



## *The Imprisoned Woman in India: Prisoner as Person*

*Rani Dhavan Shankardass*

The subject of prisons and prisoners has limited interest for the general public except to the extent that they are able to relate to the institution as a supposedly effective punitive instrument that locks up undesirables ('offenders') and keeps society safe from them. That this is all in accordance with the law of the state has given legitimacy to how prisons and prisoners are viewed and also to how they have been managed. Real knowledge about, and interest in the institution and its occupants is almost non-existent with the result that those 'inside' become invisible and thereby lost to society. And without public involvement and interest the ill fate of their present and future lives is sealed. Multiply all this by ten for what prison does to the lives of imprisoned women.

There are approximately sixteen thousand women prisoners in the whole of India – a relatively small number for such a large country. This is a figure for women in prisons all over the country on a particular day.<sup>1</sup> Added to the fact that the rate of incarceration in India is 30 (against the U.S.'s 743, or Russia's 484, or China's 118) it seems to suggest that things are not so bad in the world of imprisonment in India. Here lies the problematic. Statistics have become such a valued measure for assessing progress, development or even the quality of life that in many areas of activity, societal and state, there is more than a likelihood of missing the wood for the trees. In a country of 1.2 billion the statistic 16,000 women prisoners, and 30 per hundred thousand as the overall rate of incarceration, is more than likely to be a reason for complacency on the part of policy makers who will consequently question the fuss that penal reformers make about prisons and prisoners.

Two features are significant here: (1) What numbers actually go through the system in a year (or five years or ten years) has not been a focus for the National Crime Statistics Bureau of India. The latter numbers are ten or twenty times the figures in the books and can only be obtained if and when the collection of data is person-oriented rather than statistic-oriented. (2) Excessive focus on numbers (quantitative features of imprisonment) has resulted in a neglect of all those qualitative factors relating to locking up people that leads to the kind of damage that incarceration does most of all to women in prison. Women prisoners are persons first and prisoners second. They lose the thread of their life in a prison.

Aside from the problematic relating to numbers, the nature of women's offences – from petty theft to 'sex work', peddling drugs to dowry harassment sometimes resulting in a death, and spouse killing – as well as the causes of offending differ quite radically from those of men. Additionally their personal experiences in prison are quite dissimilar from those of men. At 5% of the prison population women in prison have received little attention in terms of who they are and what happens to them inside and when they finally leave prisons after serving their sentences. Prisons being a low priority for governments, and women housed in prisons being an even lower priority due to their relatively fewer numbers, the backgrounds they

come from, and the status of women in traditional societies, it should come as no surprise to anyone that a special focus on women prisoners has been very slow in coming.

Gradually with pressure from groups working on human rights and gender discrimination the imprisoned woman as person is becoming visible as specialists highlight that within this category there are sub-categories that need to be studied and analysed if penal reformers wish to get their act right. The Bangkok Rules relating to women prisoners could not have come at a better time, for while international bodies like the UN had begun to place sections and chapters on women and children and vulnerable groups in prison manuals and other human rights documents, there was still no researched text or handbook that made women (and children) in prison its exclusive concern. The task has only just begun.

A question that has relevance is can a document that has addressed this lacuna and made women prisoners its exclusive concern cover women in all societies around the world with equal rigour and accuracy. If not, then what would be the challenges that are posed by societies that have intricate cultural features that differ from those envisaged in most prescriptive documents on women in prison? This paper would wish to approach the subject of women prisoners from two specific angles or viewpoints: (i) that of society and (ii) that of the law. The submission here is that both society and the law have failed 'women inside' especially in traditional societies. The Bangkok Rules as a big step forward would be a success only if these failures are addressed at the level of implementation in these societies.

The social position of Indian women down the ages has been a bundle of contradictions. Some of this may be common to the whole world of women anywhere, and some is rooted in traditions that are peculiar to the Indian sub-continent. The common bits are that women have been and are home makers and carers, and even when they have worked manually down the ages (in agriculture for instance) they supplement a family income that is shared and common and not referred to as individual income. The respect they get is in proportion to the degree to which they discharge these social collective roles – a feature that will be discussed in a moment.

In addition India is a diverse society where languages, religions, caste and class crisscross and each feature plays a role in a woman's trajectory of life affecting her role in the family, community, society and state. This means that in addition to the constraints and restraints she faces as a woman because of a patriarchal society, the fact that she is a Hindu woman, or a Muslim woman, or a Sikh woman, or that she belongs to a high or low caste (a Dalit), or that she lives in New Delhi or a small village in Bihar or Uttar Pradesh, impacts the way her life plays out. It determines whether she will have some freedom to make choices, whether she will be educated, whether she will be allowed to appear in public, often what she will wear, and even what she will eat or drink. There is a control on her sexuality, and not unrelated to it, she is declared unclean at different periods of her reproductive cycle when she may not visit temples, or partake of family meals, or wash and clean herself at the common home toilet or village well. Add to this she may have a drunk for a husband who when inebriated

subjects her to violence day in and day out, a fact of life that is revealed in the blue bruises on her body that she tries hard to conceal.

And then the winds of change blow across, as indeed they must, and she stands at the crossroads between tradition and modernity learning that there are other ways. So she ventures into uncharted territory and new problems begin when for instance she has a relationship with someone from another community, or she decides to change the way she dresses, or she wants to go out of the home and hearth. She also thinks she has had enough of the abuse and violence from her spouse and one day she strikes back.

Two players can enter the fray here depending on where the woman is located and placed in terms of her location and social group: if she lives in a village she can be subjected to the justice of the village councils and depending on the kind of social norm she has violated, be subjected to harsh public punishments ranging from being ostracized, to being physically violated (particularly her sexual body-parts), to being actually subjected to ‘rape’ as a punishment (the very act that the law of the state regards as a ‘crime’). **2**

And then there is the state law. Lord Macaulay in his colonial wisdom may have believed that he was doing the greatest service to India’s old justice system rife with its vagaries and eccentricities and inequalities by promulgating a uniform system that codified both what was criminal (for one and all, including women) and what would be the ‘equal’ punishments for each criminal act (for men and women). **3** But is the punishment really equal? And more importantly is the ‘offence’ really equal in a society that is grossly unequal and has no level playing field? These questions accompany any quest for justice for women in the criminal justice system in unequal societies. It is being suggested here that the answers to these questions may be ‘no’!

There is a uniform Penal Code (Act 45 of 1860) in India that defines offences (crimes) and corresponding punishments all set out 105 odd years ago. Myriads of offences have been added to the ‘crime’ list as time went on – including social offences – but the repertoire of punishments has remained exactly the same. Nowhere does this anomaly become more apparent than in the area of women’s offences today and the punishments they carry. Any act that is an offence under the Code carries equal punishments for all offenders: Are exceptions, or extenuating circumstances a breach of that equality? The acts of ‘murder’ committed by women (as victims of abuse and violence over extended periods of time) are so drastically different from those committed by men it would need to be questioned whether they could be regarded as *identical* breaches of the codified law. But the law has just Section 302 to cover such acts and the punishment meted out has to be equal. So is it and can it be equal?

Can it ever be suggested that we can/should punish differently even when the *physical act* of the offence committed is the same? So when a drunken abusive spouse is killed by a woman it is still ‘302’ and (regardless of the before and after) the punishment for it is prescribed by the Code. Does she get exactly the same punishment as a man who has none of the provocations and circumstances and none of the trajectory of life that she has had?

I think people don't really know just how violent a drunken man gets and especially with his family and more particularly with his wife. The degree of violence is unimaginable and the foulness of language is even worse. It is a very pathetic sight to watch your children watching you being beaten by whatever comes into the hands of your spouse. I would not wish that for anyone, and that too, day in and day out. I always had bruises and cuts on some or other part of my body. It does not change, and at some point or other even your child asks, 'Why do you take it?' Your children wonder why you don't have what it takes to stop it all.

*Hasina, the Husband Slayer* in Shankardass, 2012, p.135-6

Can this backdrop ever be a part of an Indian man's life? Again the answer is 'no'.

A close look inside women's prisons in India reveals several categories of women in socioeconomic terms and nature of offences. Many share characteristics at several levels: economically and socially ill-provided, they are home makers and often supplement family incomes from the home. They are ill-educated and not encouraged to aspire to any heights, and attempts at stepping out of line (the ones drawn by men down the ages for keeping women in prescribed spaces) are dealt with drastically. Some of their offences may be similar to those committed by men (petty theft, drug-peddling): others are relationship related and not of the kind generally committed by men (dowry demands, sex work, spouse-killing). The reasons for their offending are also different (as Hasina's laments above indicate). The question that arises is can/should the law mete out its equal justice to unequal people? Punishment *in society* is different for women because social rules deem it so. Looked at from the view of even handed (legalistic) justice so is the punishment at the hands of the law different for men and women because she is being given a similar punishment for a different offence. These are complex questions to which the law might like to provide simple answers.

It is against this social background of repression that the woman imprisoned under a law that promises equal justice but is unable to give it, has to be addressed in South Asia and not simply against the usual problems of overcrowding and poor conditions. It is also the same background (that may well exist in other societies) where there are practices like genital mutilation, and female foeticide and a host of exclusion clauses for women in society that are ingeniously concealed under the garb of protection of women. Even old religious texts that bar women from public space in these societies do so under the garb of protection and safety offers for women.

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One of the most belittling features of being sent to prison for a woman, aside from the awe and terror of entering the formidable gates, is what happens on day one - the strip search. Here is the woman securely clad in her traditional attire supposedly the epitome of virtue and purity (a high premium quality in most regions like South Asia). She has been told all her life that exposing her body is to shame herself: she is now strip-searched, often quite carelessly handled, to meet the first routine of incarceration. If she protests about her *saree* being removed she is quickly put in her place with crude remarks. A self-assured woman might give a retort; a traditional woman will withdraw in her shell, injured and hurt. Rules 19, 20 and 21

(Bangkok Rules) address precisely this crucial and sensitive question by suggesting that there are alternative screening methods:

Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods....(Rule 19)

But the strip search continues.

She is then handed some clothing and sent to the 'barracks' shared by many, where she is supposed to make herself at home for the rest of the time she is there. Outside prison she was excluded from the public domain but in her home she was well in charge of the domestic front. Here in the barrack she is without any domain at all. She is now told to sit, stand, sleep, eat in specified spaces at specified times, like the instructions she gave her child in her care, except he could protest and get away with it, she dare not. She has neither privacy nor a space to call her own. Dressing and undressing in full view of others is only one of the many compromises to her inbuilt sense of decency imbibed and cultivated over the years.

Without elaborating on the subsequent procedural steps of getting accustomed to the strange environment of the prison for women who have lived in family surroundings all their lives, it is important to analyse how *specific* features of prison life are more detrimental for women than men. The most detrimental is the one that relates to the severance of that very role that is constitutive of their significance in society, giving them the small status they may have in an otherwise patriarchal world – their role as *carers*. The majority of Indian women have never lived without and outside of family. Family life defines them and they define family. In taking this into account and in emphasising the 'caretaking responsibilities' of women the Bangkok Rules (Rules 57- 61) have clearly recognised this role as carers as a vital aspect of women's lives. It is this abrupt change in a role that was carefully and deliberately drawn out for them down the ages, and that now gets thrown out of the window with clinical incarceration, that not only confuses them but actually damages their self-image; and not just for the duration of their stay in prison but almost forever thereafter. Men are not faced with this dilemma. Women are seriously wounded by the change and the wounds never heal.

The worst aspect of the destruction of the family tie is the predicament of the children of incarcerated women which could be and is the subject of a treatise all on its own. There has been little methodological focus on this damage and in India it has scarcely received attention. Children accompanying mothers are permitted to be with mothers up to the age of six, an age where memories are built and stay. These children are deprived of wholesome childhoods, and those left behind at home are left to fend for themselves often with unpleasant consequences. Systematic focus on these concerns has not really been forthcoming. Not surprising given the fact that even at the international level the problem has only recently received appropriate attention.

Then there is the discussion about her offences. At any time during her incarceration the specificity of her offence is thrown at her should she fuss about any shortfall in her treatment,

or complain about a lack of fulfilment of the basic needs related to her womanhood. If a woman from a traditional society kills her husband even if she has been violently abused, she is called not just a criminal but also a sinner (*'paapin'*). There are young girls brought into prisons in urban areas who were thrown into the deep end by circumstances to do sex work for a living, and have been arrested under the Prevention of Immoral Trafficking Act (1986). The taunts that come their way from women staff are unsavoury and objectionable. They must grin and bear them.

The needs-based rules for women prisoners that have been so late in coming still need to be adapted as they are being adopted – which is *not* to suggest any cultural relativism but simply to point to the inherent contradictions in the expectations made of women *outside* and *inside*. Some of the intrusions and indelicacies that prison brings in the lives of women coming from societies where detailed and exacting behavioural standards govern their daily lives are, in one way or another, oppressive expectations that set in motion a series of disorders. They affect the general health, and more importantly the mental health of women in prison in specifically damaging ways.

Mental health has always been a much neglected feature of human development in most societies at the best of times. It is easy to detect aberrations in physical health but addressing issues of mental health is challenging. In a prison there are enough symptoms of mental disorders provided there is someone to pick up the signs and know about them. Anxiety, stress, depression, moroseness, fear and nervousness are a constant feature of prison life. That initial tears dry up over time only suggests that the grief and anguish has been overtaken by a demanding prison routine that diverts attention temporarily; but the malady of mental disorder grows slowly within taking root and spreading and reaching levels that can be dangerous. The usual tendency for those in charge has been to suggest that the women who show the symptoms mentioned were just fussing over petty niggling issues and there was really nothing wrong with them. The realities show something far more grave and disquieting. (See Shankardass, 2012)

Morbidity in prisons being part and parcel and a result of the prison environment was soon established and then questioned professionally in a study conducted by medical experts (psychiatrists) in a large Central prison in Bangalore in India. The findings and the methodology used were made available in a two volume report that analysed the gravity of the problem and the need to address it with a sense of urgency. The report highlights the proportion of mental health problems among prisoners generally and women prisoners specifically and also the need for systematic mental health care in prisons. Staff training for the purposes of both sensitization and effective management of prisoners is recommended as a pressing need if the problem is to be prevented from assuming dangerous proportions. **4**

The references to mental health problems among women prisoners and the need to address them appear repeatedly in the Bangkok Rules. Rules 12 and 13 mention mental health care needs and the need for prison staff to be made aware of these needs.

Prison staff shall be made aware of times when women may feel particular distress so as to be sensitive to their situation and ensure that the women are provided appropriate support (Rule 13)

Rules 16 and 35 talk of ‘comprehensive mental health care programmes’ for which prison staff needed to be trained to be able to detect mental health care needs’.

Cases of common mental disorders turning into illnesses is a problem that needs not just remedial measures that address the malady but preventive measures that ensure the damage of locking up is avoided. **5** The profile of women prisoners in India clearly suggests they are not a danger to society, and imprisonment is an inappropriate way of punishing them. Sometimes a punishment gets extended to an entire clan and above all to children whose futures are tied up to their mothers. A Dowry related death often lands ten members of a family in prison. Poppy husk found atop a thatched roof in a village leads to the rounding up of the entire family that lives there.

The discourse relating to imprisonment is at a nascent stage in India, and so is the discussion about the suitability of locking up women in view of the proven damage to her person and personality. No matter how small the offence the punishment is usually the prison. No matter how short the stay, being in prison brings shame for the woman and her family. The stigma stays for a long time. An imprisoned woman has few visitors after the first few weeks and the chances are the family soon begins to feel the burden of the shame and embarrassment of her incarceration.

There is clearly a need for alternatives to prison for women in the criminal justice system. The need has been expressed in Government of India Committee Reports on prison reform generally and the treatment of women offenders specifically. **6** Unfortunately the provisions are quoted, passed on as ‘advisories’, acknowledged as guidelines, but not incorporated as changes in penal policy. The reason given is that ‘prison’ is a State subject in the federal structure of the country and the Centre may not on its own change policy on State subjects. Lame as the excuse may be it works to preserve the status quo. **7**

To summarize: the basic premises for suggesting there is a need to explore alternative ways of punishing women offenders is based on a few tested premises:

- prisons are the most opaque and secret institutions of the state where human dignity can be violated without public knowledge, an act that affects women destructively
- women’s offences differ not only from men but also from society to society and the rules for giving them proper justice need to be re-examined more sensitively
- prisons damage people and the damage they do to vulnerable prisoners like women clearly needs greater investigation, understanding and remedial measures that are often not carried out inside a prison
- we know little about what *really* goes on inside our prisons especially to women whose self-esteem and self-respect is seriously compromised
- imprisoned women suffer the worst in terms of disdain and insults in prison and outside (including from their own families) bringing their self-esteem to levels that lead them to desperation

- imprisonment of women destroys families and family life leaving women without futures: this affects women of some cultures more as they have no back up
- imprisonment serves no purpose in the case of women and is just a mechanical implementation of the rule book

A world that boasts of high achievements and giant steps for mankind needs to give this damaging institution a hard second look and search for other ways of punishing those who violate its laws, especially those who are themselves violated in the first place.

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### Notes

1. National Crime Statistics Bureau of India, Government of India, 2012
2. Various newspaper reports (January 2014) on 'gang rape 'order' by kangaroo courts in Bhirbhum, in West Bengal, and *khap panchayats* in States like Haryana where village councils order crude punishments like naked parading or gang raping of women for aberrations of social norms (such as adultery, out of caste relationships)
3. Report of the Indian Law Commission on the Indian Penal Code, 1837 (Macaulay Committee Report)
4. *Mental Health and Substance Abuse Problems in Prisons: The Bangalore Prison Mental Health study*. National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore, 2011 Report
5. Shankardass, Rani D. *In Conflict and Custody: Therapeutic Counselling for Women* (Sage, 2012)
6. *The Report of the All India Jails Reform Committee, (Mulla Committee) Ministry of Home Affairs, Government of India, 1983.*
7. Independent India as a republic is a federal state system with a Central government and 28 State Governments and 7 Union Territories. States are further subdivided into *districts* (671 in all) which in turn are subdivided into *subdivisions*, or directly into the next unit of administration *taluks or tehsils*. The management and administration of prisons is a State subject under the State List (consisting of 61 items) in Part XI of the Constitution. Prisons are governed by the Prisons Act of 1894 and Prison Manuals the most important of which date back to British India. Updated rules and manuals supplement the above regulations. Day to day administration is carried out mainly through these rules and the Prisoners' Act of 1900 and the Transfer of Prisoners Act 1950.

### References:

- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 2010
- Shankardass, Rani D. *Of Women Inside: Prison Voices from India* (Routledge, 2012)
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