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Utility of Open Prison in the Era of Increasing women Criminality: Existing Issues and Challenges in Law

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Law and society are closely connected with each other. Society is not a constant subject, its changes with time. Every person's role in this society is subject to certain changes. These changes occurred as per the needs, and circumstances, and as per the requirement of other influential factors. Its best example is women. Women always have a continued but limited role in society. There was a time when women were behind the door. She was considered a soft, weak, dependent object. She was more prone to exploitation. As result, women had been subject to legal and social protection. She was behind the wall and subject to isolation from society at large. Although, there were many incidences occurred where this protection proved to be against her benefit still as per the requirement of the era that decision was respected and recognized by everyone including women. Fortunately, the present scenario is different. The role of women is completely changed. Today, a woman is participating in every field of life without any legal, social or economical barrier. Her role is unlimited. Women and their capacity are beyond the sky. With these opportunities, there is a war of survival. This war of survival is for her rights and duties. This war makes her a part of the crime world and makes her a criminal. Crime is the reality of human life and presently the woman and their roles are no exceptions to that. The active participation by the women in every field many times becomes a cause of stress, issues, and challenges which she needs to face like a man in the society, she faces lifestyle change. Overall the adaptability of the role of men, and their responsibilities becomes a reason for biological, and hormonal changes in the woman. This biological, social, and hormonal change becomes one of the factors which push women towards criminality. Today crime against women and crime by a woman both are increasing. Unfortunately, still, our prison system is male-centric and mostly it was prepared and continued as per the past social structure which was existed at that time hence in the area of prison mostly punishment, reformation, and

other instruments of reformation are male-centric and women were not considered as a part of it. Presently old men-centric prison structures and new changes (involvement of women in crime) lead to various issues and challenges. These challenges can be categorized as; the existence of women prisoners, mother-woman prison; little and double protected space for the woman in the prison (prison in the prison for a woman), and discretion as there is no accessibility of women to the open prison. In the correctional justice system, the open prison is a blessing to the prisoners. It is the best instrument that can reform prisoners and allow them to be a part of society, family, etc during the incarceration period but women prisoners have been deprived of these facilities which lead to inequality and injustice towards them. No doubt, the accessibility of open prisons to women prisoners will become a reason for extra responsibilities, risks, and extra expenses for the state. It is a matter of equality and Women prisoners deserve to be treated with equality. Deprivation of women from open prison is never being a solution at any cost. No justification can justify this discrimination. Presently crime by women, its increasing rate, social changes, changing lifestyle, and its psychological and biological impact on the woman are all factual situations that need to be accepted and treated accordingly. Through this research paper researcher studies the crime by women, its increasing rate, causes, social changes, changing lifestyles, and its psychological and biological impact on women, as well as tries to study the utility of open prison for the woman, legal barriers for its availability, issues, and challenges of state regarding the accessibility of open prison for women and its solution.

Keywords: *women prisoners, social changes, crime, criminality, open prison.*

नकंचिश्चाश्वतम् (Nothing is permanent). The world is changing concepts. Although this line is quite old still this line has its relevance in the present world. This line is applicable everywhere in every field including morality or crime. Society is changing phenomenon where every aspect of society is continuously changing. This change brings lots of changes in every aspect of human life. These changes leave a deep impact on the life of a human being internally and externally with the other connected factors. There were lots of studies have been done by criminologists. Every criminologist has a different opinion on crime and its causes.

However, there was somehow some common opinions among criminologist that crime is deeply connected with society and its other connected factors. Each thing that is in existence in society is leaving a deep impact on the human being and humans grow accordingly. This surrounding nurtures a human thoroughly and leads him towards morality or crime. Many times defining crime is difficult or impossible, however, crime can be something wrong or something which appears to be wrong to the maximum people. It can be something that is not

going with the existing norms, culture, morality, and other factors. However, crime and human beings are closely associated with each other. Crime is a connecting factor with human beings for ages. Human has the willingness to curb crime since the ages and in order to treat a crime human being tries to treat crime and criminals accordingly.

In society, men and women are the two main genders as per traditional law. (Included transgender as per contemporary law) Each gender has its characteristics. These characters and their development mainly depends upon the surrounding where these people can survive. Surrounding factors and human beings are closely connected with each other because characteristics of the human being are mainly grown on the basis of existing biological, and sociological factors as well as treatment by others. There was one time when a woman has been treated only as a woman; resource of love, motherhood, dependent, weak, etc. It was a time when women were not only weak but more prone to victimization hence women prisoners were not the concept in the old era. Men were criminals in the majority hence state always think to treat them.

In order to treat the male offenders,' the prison authorities prepared various plans and policies. The prison department introduced lots of changes in the architecture of the prison. The best example of this modern architecture was the open prison which was specially prepared for the reformation of the prisoners. It was the era but presently woman is Omnipresent. She is participating in every field of life including crime as well. Present lifestyle, awareness, education, etc could be the responsible factor that pushes her towards criminality. Howsoever, presently crime by a woman is an important factor that needs to be considered and important changes should be introduced accordingly in every field of life including prison, today prison still appears to be a man-dominant area where the convenience of man is considered rather than the female.

As per the present scenario, the crime by women and the ratio of women prisoners are continuously increasing in India; however, male-centric prison architecture is denying all the basic fundamental and other necessary rights to women which are actually very crucial rights and can be considered as important for their reformation and rehabilitation. Among all these necessary rights access to open jail is one of them. Ideally, open jail and their access should be

available to each prisoner without any discrimination but practically in the prison, there is apparent discrimination in the selection procedure of inmates for these jails, as it seems that the facility exists only for the male prisoners in the country. Mostly this selection process is gender biased and the procedure in which we have to select prisoners for the open prison is also gendered biased.

As per the utility perspective, the open prison is one of the best instruments for the reformation of prisoners. Reformation is the basic necessity of each prisoner which should not be based upon any kind of gender discrimination. Ideally, as per the principle of the criminal justice system, there is no reason to do any discrimination between the male and female offenders to avail of the privileges of open prison, however, presently woman prisoners are going through it and hence it is necessary to study the present scenario, involvement of women in crime, its causes as well as the adoption of an open prison for the woman, issues and challenges which faced by the prison authority in this area to allow the access of open prison for the women.

WOMEN CRIMINALITY AND ITS RESPONSIBLE FACTORS

Crime by a woman is a growing issue in India or in any other country, presently even the Criminal Justice System of India is facing the same issues and challenges. Mostly the causes of women's criminality are different from men's, however, the increasing rate of criminality and its causes should not be avoided. As a result, National Crime Record Bureau is maintaining the record of women's Criminality. As Per National Crime Records Bureau (NCRB) near above 3439 women were arrested for murder in the year 2005; 3812 in the year 2007 and 4007 in the year 2009. If we analyse this data then as per the ratio wise it is an increase 1% every year, like in the year 2005 it was 5.4%, which increased 1% (5.4% to 6%) in 2007 and it was 6.4% in 2009 (NCRB figures), after analyzing this data it can be stated that in India crime rate by the women is drastically increasing as compare to past due to various reasons.¹As per changing social, and medical, parameter various factors are responsible for the increasing rate of crime. These factors especially medical factors can be divided into physical and mental factors. This factor

¹ P. M. K. Mili & Neethu Susan Cherian, 'Female Criminality in India: Prevalence, Causes and Preventive Measures' (2015) 10 (1) International Journal of Criminal Justice Sciences, 65-76

further can be divided as the permanent or temporary, physical or mental factor which leaves a deep impact on criminality.

BIOLOGICAL FACTORS

Criminology has been studied by various criminologists through various dimensions. It is a science with multiple objects. It is the science that tries to dig out the causes of criminality. Many criminologists studied the crime from multiple angles.

A biological factor or biology is one of them. As per Lombroso and other criminologists, Crime and biological factors are closely connected. Lombroso has given a completely different angle to criminology and causes of crime. Lombroso studied criminology from different perspectives, however, his work in the field of biology is a remarkable one in the word criminology. The Lombroso has touched every important area of biological criminology. He is a pioneer who has created the base for scientific study on female crime. He viewed, "female deviance as rooted in the biological makeup or as an inherent feature of the female species". "He stated that female criminals are more terrible than male criminals because cruelty by a female was much more 'refined' and diabolic than men. Lombroso thought women shared many qualities with children and they were morally deficient and their lack of intelligence was the reason for their relatively small participation in the crime². However biological factors include hormonal changes, neurons, etc. Harmon's are the most sensitive as well as more complicated ones. It is easily influenced by outer factors like environment, lifestyle, behavior, etc. some hormones are considered as triggered for anger and crime"³.

According to Lombroso, women have more qualities of criminality than men. If women started a crime then it has become more dangerous criminal than men, more brutal. In history, there were some incidences like the incident of *Fulan Devi, and the Shabanas Case*, which have proven as more brutal offenders in history. As per medical science, there are certain hormones that are responsible for criminality is Testosterone. Medically these hormones are very limited in the female but nowadays due to changing circumstances, and environment these hormones

² *Ibid*

³ Menelaos Batrinos, 'Testosterone and Aggressive Behaviour in Man' (2012) 10 (3) International Journal of endocrinology and Metabolism, 563-568

are increasing in the woman⁴ and causing a woman towards criminality. Hormonal changes are one of the causes which lead women toward crime. This causes many times leads her towards criminality otherwise than other genetic factors. It can be stated that the present development in the surroundings and its impact is not only a cause for the criminality but yes, somewhere it is the cause that cannot be ignored.

PSYCHOLOGICAL FACTORS

Biological perspectives leave a deep impact on the psychology of human beings. It is closely connected. Otherwise, then the changing role of women causes to be criminality for women. The woman has been suppressed by utmost everyone. In the traditional form of society where education, right, and equality did not exist at that time this suppression was not realized by the woman but presently the education, active role of women in society, and ill-treatment causes frustration in the woman. Every day she is suffering sexual assault, rape, discrimination in their personal and professional life, etc. This kind of behavior converted women into rebellion and leads us towards crime. The woman is participating in every field of life. She is more prone to victimization than before. Many times frustrated women, unsatisfied victims (not able to get justice to due carious causes, shame,etc) are the main causes of women's criminality and psychological triggered towards the criminality by the woman.

SOCIOLOGICAL FACTORS

Sociological and psychological factors are connected with each other. Infact, social factor is the main cause behind psychological, biological changes. In India, in the name of modernization and under the influence of western culture there are so many revolutionary changes have been introduced. On the one hand, laws provide them lots of benefits, rights and push them towards equality but on the other hand, society is still in the conventional era where women are still suffering from lots of discrimination and other crimes where women are more prone to be the victim. As already mentioned this injustice and inequality is so prima facie to ignore. This injustice inequality is realized by the women and many times these factors lead her towards criminality.

⁴ Kiara Anthony, 'High testosterone level in woman' (*Healthline*, 16 April 2019)
<<https://www.healthline.com/health/high-testosterone-in-women>> accessed 05 May 2022

However, overall these rampant changes in society lead to various biological, sociological changes in women and lead women towards criminality. Presently increasing rate of women criminals is an issue hence states have to think about the restructuring of the criminal justice system where the woman criminals should have equal space like other male offenders.

A CONCEPT OF OPEN PRISON

The concept of Open prison is more based upon the concept of reintegration. As previously said men are continuously tried to treat a crime through all the possible ways. In order to treat criminals, they prepared prison so that punishment can be imposed on the human being under some isolation but gradually people knew that punishment or prison is not the only way to treat prisoners. Every prisoner should not be treated in the same way hence there were some architectural changes were introduced. These architectural changes were based upon the policies which are known as reformation, rehabilitation, and reintegration. Prisoners should be more connected with society in order to reintegrate hence for the prisoners who have more chances for their reformation, rehabilitation, and reintegration these people should be part of an open prison. That was a whole idea behind the open prison.

The concept of open prison has come into existence in the post-revolution of America. It was a time where human rights come into existence in a wider manner than anything. In this era, everyone is treated equally and more humanly without considering their status. Everyone has the right to be treated with more dignity, without any cruelty, torture, etc. hence the open prison was established so that the prisoners should be rewarded for their better behaviour, self-reliance, training, jobs, etc. It ultimately motivated the prisoners for a better tomorrow. As per the history it can be stated that the first open prison was established at Switzerland in the year 1916. After analysing this year it can be stated that the open prison was quite an old form of prison which was always based upon the modern principle of Criminal Justice System and rehabilitation and reintegration of prisoners.⁵

⁵ Nrupathunga Patel & G.S.Venmadhava, 'Resocialisation of Prisoners - A Concept of Open Prison' (2016) 6 (4) Journal of Social science, 576-577

CONCEPT OF AN OPEN PRISON IN INDIA AND WOMEN

India is known by the world at large for violence and friendly nature. It has been actively participating in each idea which is formed for the betterment of the human being. India has been a signatory for various international treaties which are prepared for the benefit of humanity. India has been signed many treaties and in that treaties the International Covenant on Civil and Political Rights (“ICCPR”) is one the core international treaty which has specifically prepared for the betterment and protection of the rights of prisoners. India signed and ratified this Covenant in 1979. As India is the signatory of this covenant hence it is bound to incorporate it into the domestic law and state practice.⁶As incorporation India try to implement the entire importance rule regarding this covenant and accordingly India established its first open prison in the Bombay Presidency in the year 1905. The prisoners were selected from the special class prisoners of Thane Central Jail, Bombay. After Bombay open prison The state of Uttar Pradesh established the first open prison camp in the year 1953 for the construction of a dam over *Chandraprabha* River near *Benaras* After completing this darn the prisoners of the Pen camp were shifted to a nearby place of constructing the dam over *Karamnasa* River.⁷

The idea of Uttar Pradesh Open prison was based upon the community service or British idea. Mostly in the history the British were use to utilize the prisoners for their work especially for the public constructions which was deadly in the nature. The same idea was adopted by the UP, however the nature of the work which was chooses by the UP was beneficial for the prisoners. Overall, Open prison were established so that they can use the prisoners for the work simultaneously prisoners were also get some opportunities to connect with the outer world. Howsoever, there are so many open prisonthat were established during that period. The apex court of India many time through their judgment shown the importance of open prison and its utility. As per the Apex court of India, open prison is important for everyone especially in the case of young offenders. A utility of open prison is much more high in the case of young offenders because young offenders who could be protected from some of the

⁶ *Ibid*

⁷ *Ibid*

well-known vices to which young inmates are subjected in conventional jails. These young offenders are left out and neglected by their families. These young offenders are carrying lots of bitterness in them due to their past experiences. Perhaps through open prison that bitterness could be treated.

The second group of people who can be benefitted by this idea is old age prisoners who are venerable section of the prison the society. Old people are also finding it difficult to rehabilitate in the society after their release. Open prison keep these people busy, near to community and enhance some qualities in them so that they can merge with the society after their relief. As result Open prisons can help these prisoners in transitioning to a normal life. Open prison provide an opportunities to the prisoners so that they can save their families because many families are devastated when their sole breadwinners are sentenced to long periods of imprisonment. In such situation although the law has given punishment to the one still every member of the family have to suffer through various way, in that economical issue is a serious one. In this period family needs a support of offender mentally and economically vice versa. This mental and financial support help the family and offenders to stand strong in the period of incarceration hence open prisons actively encourage prison visits in the initial stages and even allow families to stay with prisoners and together to earn a livelihood.⁸

ELIGIBILITY TO BE THE PART OF OPEN PRISON

Though open prison is good idea still safety of the society is a priority of the criminal justice system hence, there must be balance approach to achieve the goal of reformation of prisoners and safety of the society. Hence law has prepared certain rules which need to be follow by the prisoners and prison authority while shifting the prisoners to the open prison. The willingness of prisoners to be the part of open prison, he should be ready to follow the rules and regulations of open prison, that man should be fit mentally and physically, they must be petty offenders who have committed a crime petty offenses which have punishment for one year or more and they must finish one-fourth part of It in the prison, most of the time they should be first offenders and who should not be less than 21 and more than 50.

⁸ Parikshit Goyal & Kamesh Vedula, 'Understanding Open Prisons in India' (2021) 56 (4) Economic & Political Weekly <<https://www.epw.in/engage/article/understanding-open-prisons-india>> accessed 05 May 2022

OFFENDERS WHO HAS PROHIBITED BEING THE PART OF OPEN PRISON

In this Act, some people are prohibited to be part of an open prison. These least includes habitual offenders, professional offenders, prisoners who are awarded three or more major punishments for prison offenses during the last two years, before the date of selection, and woman.⁹ Other persons are serious offenders hence they have been deprived of this privilege but the woman and its deprivation from the open prison is nothing but the inequality against the woman. Comparing and depriving a woman just because she is the woman is somewhere heading us towards injustice. Every person who has been deprived is a serious offender hence they have been deprived but the woman and their deprivation from the best model of prison just on the ground of gender is leading us towards injustice. This discrimination is based upon the law which was framed utmost fifty years ago. In these fifty years, society has been changed, the principle of laws has been changed, the status of the woman has been changed, the role of the states has been changed, the basic fundamental of the laws has been changed overall today we are living in the era where the constitution of India has given us the right to equality, it prevents us to do any discrimination based on gender or sex.¹⁰

As per the Minimum Standard Rule of Prison, there will be no discrimination based on sex gender, etc. but unfortunately today there is discrimination between males and females. If we observed the circumstances which were existed fifty years ago then the less criminality by the woman, their security issues, limited role of the state must be the reason but presently the women are participating in every field including the crime and the state has responsibility for the protection of everyone including the woman prisoners hence presently there is no any valid ground has existed which can prevent a state to deprive a woman prisoners of the benefit of an open prison.

ISSUES AND CHALLENGES OF WOMEN PRISONER

Women prisoners are different than men prisoners. This difference can be based upon biology, sociology, nurturing, etc. Women prisoners are the ones, who never committed the crime until the circumstances provoke them to do but as per the present scenario and as per present

⁹ *Ibid*

¹⁰ Constitution of India, 1950, art.14

structure this scenario has been created hence woman criminality is a reality. Many times women are coming from such a background where they don't have anything who can feed them properly. Especially in the case of married women, no one wants to accept them as part of their family.

As per Indian culture, married women belong to the husband only and the husband is not ready to accept hence this woman does not have anything to survive after their release. Otherwise, than that woman, those who are specially coming from the traditional background don't possess any skill to earn the money simultaneously the limited, isolated environment of prison make them more isolated. Otherwise, then that married women and their innocent children have been questioned by the state for ago. In India, the child of woman prisoners does not allow to stay with the mother after the age of twelve years of his age. This is infringing the right of the child to stay with their mother legally as well as psychologically it is giving a deep impact on the child. Otherwise, than that motherhood is also a moral right which many times infringed due to this separation of mother and child.

As many times the relatives of the woman are not ready to adopt this child due to bitter relationship simultaneously the development of the child should not be ignored by the state hence state take away the child from the mother. Overall if women become self-sufficient then this problem could be solved. It could be stated that presently women prisoners have various issues including hygiene, motherhood, self-sufficiency, being unskilled to earn the money, not support from the family, infringement of motherhood, etc.

UTILITY OF OPEN PRISON FOR WOMEN

Open prison has been built on trust-to-trust relationships. Open prison is an example of the best architecture of reformation of prisoners. It provides them an open sky, liberty, less surveillance, opportunity to earn the money, open prison is tried to remove all the disadvantages which are existed in the conventional form of tradition.

Presently, the prison which is existed it has been prepared in the light of male prisoners, later on, due to women criminality woman prisons were constructed but it is less in numbers. Generally, for the women's prison, the prison within the prison, this model is adopted. In this

format, women have less space to survive, otherwise than that the woman ultimately and indirectly is the part of male surveillance. Prison has lots of disadvantages on the health of prisoners psychologically, mentally, physically etc and limited prison leads the situation towards the worst. As it is stated open prison is open hence most of the harmful effects of conventional prison should be avoided. Hence whatever issues faced by the woman due to conventional prison can be avoided due to open prison.

Women are depended upon someone for their daily needs in their normal life. As when they were arrested by the police in certain crimes which are mostly grave offenses that occurred due to domestic violence and other injustice on women. In such circumstances, no relative is ready to accept them as part of their life from their maternal side and husband's side. In such a situation open prison can provide them the opportunity to earn the money, stay close to society and it will allow them to understand society from a different perspective, to enhance their skills open prison can play a very important role.

The most important issues regarding the women's prisoners are their child, motherhood etc. as Children of woman prisoners are ultimately innocent one still spends twelve years of their life within the four walls without any crime. These four walls leave a deep impact on their life which remained with them forever. This is enough cause to be the criminal in future. Otherwise, than that the separation of a woman from their child is another issue, this separation causes bitterness in the mind of the child for the state machinery as well as in the mind of women as well. if open prison can be used for the women prisoners especially for the mother women prisoners then their life will be more independent, they can enjoy their motherhood for a longer time as well as can earn the money to nurture the child.

It is high time where open jails should be allotted to the women so that their various issues can be solved. Women and Child Ministry, Supreme Court of India ¹¹is suggested time to time importance of open prison. In fact, open prison is more useful than male prison. It is also useful for their child as well so that they can benefit from lots of facilities which could not be provided to them within the four walls.

¹¹ *R.D. Upadhyay v State of A.P.*, (1999) 4 SCC 437

No doubt, the state has some issues to adopt the open prison for women prisoners. The state has introduced many things for the betterment of the prisoners. If there are no policies then the state introduced policies accordingly but when there are laws then the state is bound to follow this law. However, the security of woman, available laws, and its limitation is some issues that prevent a state to choose women as part of an open prison. Presently law, its limitation, security of women, could be limitations or issues which are faced by the state. These issues need to be solved in order to introduce some revolution in the field of women prisoners and for their betterment.

CONCLUSION

The Criminal Justice System of India is bound to reform the prisoner as well as bound to provide them the best opportunities for their rehabilitation, reintegration, and reformation without any discrimination. The Constitution of India is providing right to equality to everyone so that everyone can grow and avail all opportunities. Even the Minimum Standard Rule on Prison are representing the right to equality, although our basic statutes are supporting to the equality still in the prison, there are certain inequality which is an outcome of the law which was prepared fifty years ago. Perhaps the gender biased law which was prepared fifty years ago look like justified one because it was based on those circumstances, culture, mentality, need, principles of law, moto of criminal justice system which were existed at that time, presently society is changing, the role of women, men are changing positively and negatively.

These changes many times lead a woman toward criminality. Ratio of woman criminality is increasing. After analysing the present scenario it can be stated that presently the Criminal Justice System should be gender biased from the penological perspective. The penological institution of India should be developed to provide basic amenities to the prisoners without any gender biased. No doubt, open prison is one of the main institutes of correctional institution which has been prepared to achieve aim and object of the reformation. Any statutes or rule which is discriminating between male or female prisoners should go. The law prepared fifty years ago does not have relevance in the present world. It is only taking all opportunities

of reformation from the women prisoners without any proper justification. In the male centric prison women faced many issues and challenges to survive.

These challenges are yet not solve by the state due to its critical nature. In the light of present scenario, ratio of women criminality, need, changing circumstances, modernisation of law and society it can be conclude that woman prisoners should be the part of open prison so that all the issues faced by the woman as a part of the traditional prison can be resolve. Overall open prisons have the qualities to resolve all the issues faced by women prisoners and the best possible justification is not sufficient to take away that right from the women prisoners. Hence it is mandatory to do all the necessary changes in the existing law or the new piece of law should be introduced so that the open prison can be utilize by all the gender including women without any discrimination.

SUGGESTIONS

- Causes of women criminality should be studied in broader manner so that various programme can be executed to prevent women criminality.
- Mostly the crimes by women are based upon the safety, security and basic economic needs hence these problems of the women need to be solved.
- Women criminality is increasing issue but still under control hence it needs to be control so that in future it will not grow like serious and uncontrollable issue.
- A law that was enacted fifty years ago should go and the new law should be enacted as per new existing circumstances.
- Perhaps, Security has been the cause to deprive women of access to an open prison but presently state is a welfare state and duty-bound to protect everyone. Security has never been a justified reason to deprive a woman of the open prison.

The concept of security is for the betterment of everyone. It should not be used for violation of any basic right of any basic facilities.

- Special open prisons should be formed for women, like the State of Maharashtra. Or at least semi-open prisons should be formed for the security of the women.

- A use of open prison should be promote so that maximum deserving convicts can able to rehabilitate them; as presently in India traditional prison are overcrowded and other hand open prison is still vacant with 30% seats. If we promote the maximum use of open prison for every offender who deserves one then man issues with the traditional prison can sort it out.
- Other necessary changes should be introduced for the betterment of women prisoners and their children.