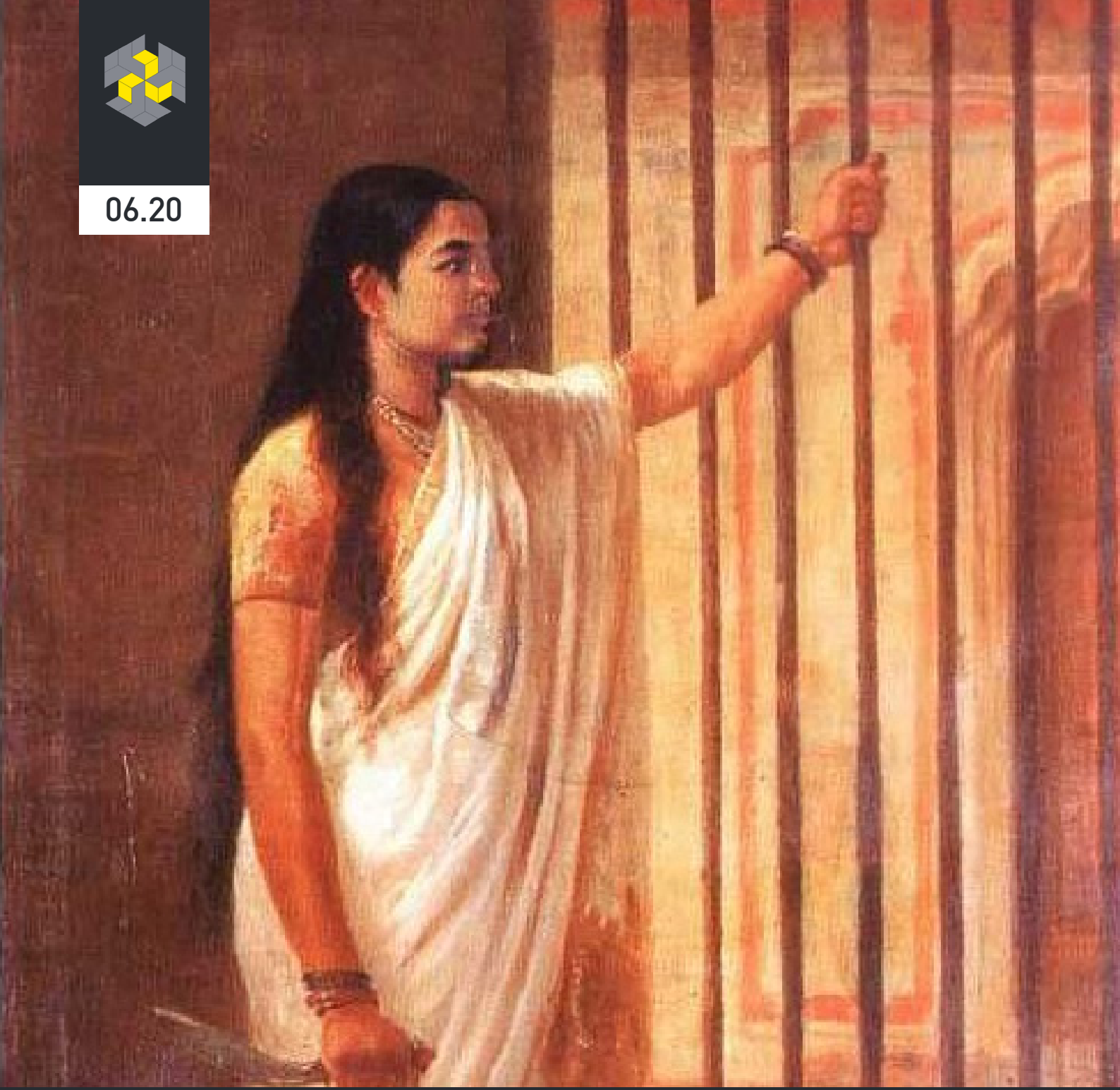




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FEMALE PRISONERS IN INDIA: THE CONSEQUENCES OF TRIPLE MARGINALISATION

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ISSUE BRIEF

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ABSTRACT

The treatment of women in Indian societies is riddled with irony. Religion, tradition and mythology, originating from both the mainland as well as the hinterland, liken women to goddesses and believe them to be harbingers of wealth and prosperity. Yet, patriarchal and misogynistic tendencies deeply sewn into our fabric have resulted in India being deemed “the most dangerous country in the world to be a woman”. In such a context, the stigma faced by female prisoners in India is threefold – as women, as being in conflict with the law, and within the justice system, as a minority. This brief, thus, seeks to highlight the state of female prisoners across the country and aims to draw conclusions on whether gender bias is visible in the Indian criminal system’s response to women as offenders.

INTRODUCTION: FEMALE CRIMINALITY IN THEORY

At the outset, it is important to acknowledge the scarcity of research exploring gender equality in the criminal law structure, specifically in the Indian context. However, on a macro level, researchers worldwide have extensively debated on which lens is best suited to understand women’s criminality. At the centre of these debates is the consideration of biological differences between men and women and how they result in differences between male and female criminal behaviour¹. Feminist literature sees less and less merit in studying biological factors as it shifts the focus away from the political causes of crime. Female criminality is, thus, increasingly being viewed in the patriarchal context, where a significant imbalance of power exists between men and women.

Prioritising the political over the biological has led researchers to study how gender identity plays a significant role in determining the “dispositional traits” that act as “motivations behind criminal acts” (Lodha et al. 2018). For example, given their submissive position within the structure of a household and the resulting financial inequality and dependency, women commit “property crimes” and petty crimes such as shoplifting, more often than “violent crimes” (Naffine 2015, Steffensmeier 2001, LaGrange and Silverman 1999, Steffensmeier and Allan 1996). The overlap of gender and class emerges as a strong determinant of female criminality, and most female offenders belong to economically weaker sections (Madhurima 2009, Saxena 1994). Moreover, when women do commit “violent crimes”, often they are acts of retaliation, given the increasing levels of violence against women (Freeman and Sandler 2008, Ahuja 1996).

However, as soon as one begins to differentiate criminals on the basis of gender, the question arises of preferential treatment being extended to female offenders, especially to mothers. Here, to many, gender appears in conflict with the ideal of equality within criminal justice. Additionally, it is also claimed that lenient sentencing for women further imposes gender roles that place familial chores and childcare as solely the woman’s burden.

¹ Amongst the earliest studies on female crime is Caesar Lombroso’s theory that “female deviance is rooted in the biological makeup or as inherent feature of the female species” Lombroso and Ferrero (1895). Pollak (1950) also linked hormonal changes during menstruation, pregnancy and menopause and the resultant emotional changes, mood swings and cravings to criminality.

Overall, conflicting viewpoints exist on the best way to respond to female criminality that would serve towards an egalitarian justice system while simultaneously challenging the deeper patriarchal biases.

FEMALE PRISONERS IN INDIA

Once we recognise the political and economic causes that can explain the intent of women who commit crimes, it does not come as a surprise that most women are arrested in India for sex-related crimes (prostitution), child marriage, dowry murder, murder of husbands and other male relatives due to cruelty or sexual harassment (Bhosle 2009, Madhurima 2009, Bajpai 2005, Maniyar 2004, Rudd 2001). This is not to say that gender-neutral motivations for crime do not exist among female offenders. Women are also arrested for theft, burglary, consumption and trade of illicit drugs and other such offences (Bajpai 2005).

Women constitute a small fraction of the general prison population in India. As on 31st December 2018, there were 19,242 women lodged in prisons across the country as compared to 4,46,842 men (NCRB 2018). However, the level of female criminality in India has been rising over the past decade, and the percentage increase is almost the same as the increase in male criminality (Table 1). Globally, the number of female inmates has grown much faster than the male prison population, with the number of women in prison increasing by over 50% since 2000, while the male population increased by only around 20% (Walmsley 2017).

TABLE 1: STATISTICS ON PRISONERS IN INDIA

Prisoners ²	2003	2008	2018	% increase (15 years)	% increase (10 years)
Female	12,780	15,929	19,242	50.56	20.79
Male	3,13,739	3,68,824	4,46,842	42.42	21.15

SOURCE: NATIONAL CRIME RECORDS BUREAU

Despite the fact that the incidence of crimes committed by women remains low, it is important to review how a society responds to female criminality. In the Indian context, society places upon every woman the responsibility to preserve “social norms, traditions, customs, morality and family cohesiveness” (Mili and Cherian 2015). Women who deviate from taking up such a role, for example, those who wish to stay single or do not prefer to have children, are often ostracised in both overt and subtle ways. Criminality, in many ways the ultimate form of deviation, is still perceived to be a “masculine deviation” (Narula 2018). There is, thus, a natural reluctance to accept female criminality as a reality and accord it the same importance and urgency as male criminality in both academia and policy.

² Number of prisoners includes convicts, under-trial prisoners, detainees and other inmates as per data furnished at the end of each year. The figures provided for 2018 do not include data from the state of West Bengal. For that state, data furnished for 2017 has been used.

I INSTITUTIONAL CAPACITY FOR FEMALE OFFENDERS

As a direct result of the above, India lacks the institutional capacity to respond to and reform female prisoners. At the end of the year 2018, there were only a total of 24 women's jails in the country. A mere 16.9% of the total number of female prisoners were lodged in these women's jails (NCRB 2018). The remaining female prisoners continued to be jailed in small enclosures built within general prisons. The Model Prison Manual, published in 2016 by the Ministry of Home Affairs, mandated the presence of at least one women's jail in each state. However, as of 2018, 21 Indian states and UTs did not have the facility of prisons built exclusively for women (Ibid.). As a result, more often than not, women prisoners are lodged in prisons outside the state of their residence, resulting in a lack of contact with their families over extended periods of time.

Interestingly, women's jails in India have a total capacity to house 5,593 inmates, but they reported only a 57.98% occupancy (Ibid.)³. Therefore, despite over 40% vacancy in women's jails, the Indian administration continues to lodge female prisoners in prisons built by default for men during the British era. In fact, in Tamil Nadu, the state with the highest number of women's jails, the occupancy rate of women's jails is the lowest at 25.8%. The infrastructure of general prisons does not meet the needs of its female occupants, and there is a severe dearth of facilities for menstruating, pregnant and lactating women. At the same time, general prisons suffer from the evasive issue of overcrowding, with an occupancy rate close to 120% (Ibid.)⁴. The burden of overcrowding, then, certainly falls disproportionately on the female inmates.

It is not just the prison infrastructure that is lacking; there is also a severe shortage of female prison staff and policewomen in the country. In 2018, of 60,024 jail staff and officers, only a little over 11% were women. Similarly, of 1,914 medical staff in jails, only 252 were female officers (Ibid.)⁵. As per the latest data available from 2017, female officers constituted only a little over 7% of the total police strength in India (Commonwealth Human Rights Initiative 2018). This directly results in privacy concerns and issues related to unethical and illegal strip body searches, among others, which violate fundamental rights of female prisoners.

³ The occupancy rate of women jails decreased from 70.4% in 2013 to 57.98% in 2018.

⁴ The leading cause behind overcrowding of Indian jails is delays in trials due to an overburdened judicial system. Many Under Trial Prisoners (UTPs) remain detained in jails for long periods of time even if charged for crimes as petty as travelling in the railways without a valid ticket.

⁵ The sanctioned strength of jail-staff was 85,840 and of medical staff was 3,220 in 2018.

I ISSUES AFFECTING PHYSICAL AND MENTAL SAFETY OF FEMALE INMATES

As mentioned previously, a majority of female criminals occupy general prisons where their needs receive little to no attention as compared to those of male inmates. Beyond infrastructural inequalities, this results in serious health concerns for women living in Indian prisons. There is a shortage of female medical officers as well as specific medical officers such as gynaecologists and psychologists (Committee on Empowerment of Women 2018, Citizens for Justice and Peace 2019). Furthermore, prison staff, as well as the police, are often inadequately trained and sensitised to deal with issues specific to women.

Incidents of corruption, torture and harassment, including sexual harassment by both jail authorities and male inmates, also occur frequently. In 2017, the Byculla prison riots⁶ brought to the front the prevalence of use of violence in Indian prisons. It also legitimised the possibility that prison deaths reported as caused by suicide or a medical condition can very well be an outcome of custodial violence. Archaic and outdated legislation governing prison administration makes these shocking levels of abuse possible in Indian prisons. The Prison Act, 1894 prescribes certain punishments for prison offences to maintain discipline in jails which range from providing bad food to violent acts such as whipping. In sharp contrast, prison staff when found violating regulations are merely fined an amount as low as INR 200. Even in cases of severe violations, they cannot be imprisoned for more than three months. It is obvious, then, that several instances of abuse and harassment by authorities often go unreported by prisoners. Cases related to recording women inmates without their consent have also been reported (The News Minute 2017).

The need for reform in prison regulations and the inherent gender bias is also evident in the fact that it was only in 2018 when the provision of semi-open and open prisons in Tihar jail was extended to female prisoners, after the Delhi High Court disapproved of previous guidelines that denied this benefit to women inmates.

That the prison environment is sub-par can also be presumed from the reluctance of jail authorities in freely allowing independent research studies to be conducted within prisons. Researchers have lamented upon how prison staff insist on being present while interviews with inmates are conducted and also try to restrict interviewers to the visitor's room, disabling them from recording first-hand accounts of the state of prisons. In some cases, the prisoners who are to be a part of the study are selected by the authorities themselves, even as the study team requests for random sampling, resulting in response bias and compromised findings.

⁶ Byculla jail guards were accused of killing a murder convict in the prison located in Mumbai. The female prisoner was beaten to death by the authorities upon inquiring about missing rations. Following the death of the inmate, close to 300 prisoners erupted in a riot.

| CONCLUSION

From the above discussions, it is apparent that women are more vulnerable under the current system of administering criminal justice in the country as both Under Trial Prisoners (UTPs) and also as convicts. It is also perceptible how gender aggravates the poor treatment meted out to criminals in general. A strong case can be made for the consideration of the socio-economic conditions of women in conflict with law before deciding upon their fate. It is possible that gender-neutral treatment of criminals might play to the disadvantage of certain women prisoners. Additionally, it is important to recognise that women face higher levels of post-release stigmatisation when compared to men. The responsibility to ensure their integration back into society remains with the state. Most importantly, as a society, it is a need to humanise female criminals and their plight, and strive for equal recognition of their rights by effecting progressive prison reforms.

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