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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E   B L A C K  
L E G A L

# **NEED FOR GENDER-SPECIFIC HEALTH CARE IN PRISONS**

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## **ABSTRACT:**

**“Despite the belief that wrongdoers are mostly male-perpetrated, women are often also culprits.”**

As basically women are soft-hearted and been a care-takers all through their life. The condition of their mental health is so much different from men. During earlier time there was dominance of male population in prison so the rules and regulations are also favourable to them. The ideology of women was not capable of crime-doers so this led these rules not focusing on them.

Basically, we could not expect a normal well-being in a prison, the difference between the biological and mental health needs of men and women should be taken into account when it comes to health care. As it is very common that women are undergoing menstruation every month and if they are pregnant, proper health care is important, so this cannot be brought into implementation as it is as it had been set up considering the mindset of men's needs.

It is the responsibility of government and judiciary to regulate and take care of the needs and well-being of incarcerated people considering women on first-hand. The prisons are maintained separately for men & women but that's not enough, the health care and other facilities are not so favourable to both of them.

**KEYWORDS:** Women, Crime, Incarceration, Women Prisoners, Health, Mental illness, Physical abuse, Measures, Reformation.

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## INTRODUCTION:

No one truly knows a nation until one has been inside its jail. A nation should not be judged by how it treats its highest citizens, but its lowest once.

(Nelson Mandela)

We all should agree that it is more related quote because the highest get treated good everywhere, also in jail. Obviously, the prison system is more sensitive and lacks more attention of media and society. Inmates in prisons are still our citizens and should not be denied of basic human rights as other citizens. Only their right to freedom of movement is suspended and not all other rights such as fundamental and basic human rights remain the same. As being a developing county, we should also concentrate on funding and budgeting a little to our jails.

When there comes an ability to do crime, the truth is that gender has nothing to do with. Men are always seen as rough, sturdy while women are often seen as nurturers and caregivers, a thought of she/they can commit crimes, becomes tough to accept in Indian society as we have seen women in place of mothers, sisters or wives, in a most compassionate, caregiving roles and believing that is only them. It's actually a shock when a person having these characteristics can also do crimes.

While coming to aspect of life, motivation of women wrongdoers was different from that of male peers. According to statistics men are driven by sadism, sex, lust, violence while women are found to be mostly economic in nature. Greedy and mental imbalance can be seen in both the gender wrongdoers. Rather than men, women usually target people who they knew or who are primary caregivers too. Statistics all over the world shows that women mostly kill people they are close to or get close to and then kill. Their crimes are more cautious and planned precisely, which is why it is often possible to escape with less punishment by the judiciary.

*Women a neglected minority in prison context?* As a reason of their sex women constitute a special group within prisons because characteristics and needs of women varies from that of men. They include mental disorder, drug addiction, physical abuse before or in prison, some may have young children who may be taken care solely. The health status of prisoners is generally much poorer than that of general population. As men dominate prison system, rules mostly favour them. Data on health of women in prison and health care facilities are rare, because most prison data are not gender specific. Many might not receive adequate health care before incarceration so we should not make them more week. Mostly mental illness would have been cause of wrong done, resulting in imprisonment and rates of suicide and self-harm are noticeably higher in women prisoners



while compared to men. Imprisoning women also result is more social problems like family breakdown, loss of motherhood which would take long term to fix as it was and even may get worse than before.

### **METHODOLOGY:**

This study is based on secondary data obtained from various sources, both quantitative and qualitative in nature. The findings are supported by an examination of reports by this Ministry exclusively commissioned for this study- they are reports from jail visits conducted by National Commission for Women between 2019 to 2021 and a comprehensive review of Prison Statistics by National Crime Records Bureau, 2021. Our study has also taken into consideration other secondary data published by Ministry of Women and Child Development, Ministry of Home Affairs, data published by Prison Manuals, National Human Rights Commission, World Health Organisation, United Nations Office on Drugs and Crime, various Central level Committees formed for reformation of women prisoners and also referred orders and judgements from All India Report.

### **TYPES OF JAIL AND ITS AVAILABILITY IN INDIA:**

Prison and its administration are a state subject as it is listed in the state list in schedule VII of the Indian constitution. Establishments of prisons in various states & UTs consists of several types of jails.

Presently there are several types of jails in our states & UTs which are lagging for women prisoners. As per the reports of NCRB of the year 2019, there were a total of 1350 prisons in India. In that,

- Central Jails (144),
- District Jails (410),
- Sub Jail (617),
- Women Jail (31),
- Borstal Schools (19),<sup>3</sup>
- Open Jails (86),
- Special Jails (41).

The major problem faced by the female accused were lack of women prison. In most of the cases under trial female accused was detained in same jail where both male and female lives, even though sometimes separate cells have been there, the accused females were felt uncomfortable. And as per the prison statistics India 2019, at the yearend 19,913 women prisoners were held in 1350 jails all across the nation. A vast group of female prisoners throughout the country were confined in very small detention cells within the male prisoners. Out of the total arrested group of women prisoners, only 18% (3650) were confined in specific women prisons.

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<sup>3</sup> NCRB Annual Report, 2019 & Prison Record India, 2019.

These kinds of situations even for detaining the women were happening, how would they supposed to get proper care on their mental and physical needs?

## **BACKGROUND FOR PRISONING WOMENS:**

### **1. CRIMES BY WOMEN**

In 2019, over 2 lakh women were arrested for crimes under the Indian Penal Code (IPC) and Special and Local Laws (SSL)<sup>4</sup>. The number of women offenders arrested for committing cognizable offence between the age 118-30 years in 2018 (NCRB, 2018) were 64,369 (4.13%) has hiked up to 1,98,380 in 2019 (6.15%) (NCRB,2019). Most of the women are arrested for offence against property, against person, and other offence such which include any crime that affects the law and order of society. The overall crime by women is increasing over the past decade. While the number is quite large only a proportion of arrested women are incarcerated in prison, either of them are in conviction or undertrial.

### **2. STATISTICS ON WOMEN IN PRISON**

As per most recent data<sup>5</sup> available from the end of 2021, there are 4,81,387 prisoners in jail in India. Women constitute only 15 State/UTs were having Women Jails (32 women jails) with a total capacity of 6,767 in India. These States/UTs (Number of Jails) (Capacity) are Rajasthan (7) (998), Tamil Nadu (5) (2018), Kerala (3) (232), Andhra Pradesh (2) (280), Gujarat (2) (410), Uttar Pradesh (2) (540), Delhi (2) (680), Karnataka (1) (100), Maharashtra (1) (262), Mizoram (1) (96), Odisha (1) (55), Punjab (1) (320), Telangana (1) (260) and West Bengal (1) (314) and the rest of 21 States/UTs have no separate Women Jail as on 31<sup>st</sup> December, 2021. With actual number of prisoners in these women jail is 3,808 (Occupancy Rate: 56.3%) which include Five (5) Transgender inmates, capacity of women inmates in other types of jail (i.e., except women jails) was 22,659 with the actual number of women inmates in these jails was 19,115 (Occupancy Rate: 84.4%) as on 31<sup>st</sup> December, 2021.

Uttarakhand has reported the highest female occupancy rate (178.8%) (4,995) followed by Bihar (152.3%) (3,067) and Chhattisgarh (147.6%) (1,892). There are 1,650 women prisoners with 1,867 children as on 31<sup>st</sup> December, 2021. Among these women prisoners 1,418 women prisoners were undertrial prisoners who were accompanied by 1,601 children and 216 convicted prisoners who were accompanied by 246 children.

### **3. LAWS GOVERNING WOMEN IN PRISON**

According to the State List provided in the Seventh Schedule of Indian Constitution<sup>6</sup> says that prisons,

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<sup>4</sup> Crime in India 2019, NCRB

<sup>5</sup> Prison Statistics India 2021, NCRB

<sup>6</sup> Item 4 of List II, The Constitution of India.

reformatories, borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other states for the use of prisons and other institutions come under state Governments. The rules of incarceration are determined by following laws:

- Indian Penal Code, 1860
- Prison Act, 1894
- Prisoner's Act, 1900
- Identification of Prisoner's Act, 1920
- Exchange of Prisoner's Act, 1948
- Transfer of Prisoner's Act, 1950
- Prisoner (Attendance in Court) Act, 1955
- Prohibition of Offenders Act, 1958
- Code of Criminal Procedure, 1973
- Repatriation of Prisoner's Act, 2003
- Model Prison Manual, 2016.

#### **CAUSE OF FEMALE CRIMINALITY:**

As we discussed earlier women mostly brought up in a way where she doesn't involve in violative activities but when she is pushed to do so there might be some disturbing scenario where she could keep calm and silent. The reason for this evolution can be because of biological, psychological and sociological factors which is causing female criminality and the rise in same in current society.

1. **Biological factor:** Women go through lot of internal physic changes like hormonal imbalances lot more than men as they face menstrual and ovulation cycle every month, menopausal stage, pregnancy period, they have mood swing, impulses, cravings which is simple to hear but way more complicate to experience and lead to frustration in female and act as a contributory factor in commission of crime. Lombroso & Ferrero<sup>7</sup> says that "biologically females are considered to be morally deficient and lack intelligence to participate in the crime". But Indian women, more likely to commit crimes due to their socio-economic deprivation since childhood.
2. **Psychological factor:** There's always different opinion when combining female crimes with psychological factors. Bonger suggest that women are far more psychologically stronger than men, and thus their participation in crime is far lower than that of men but they are strong enough ready to do a crime mentally due to economic deprivation or loss, mental illness and psychological problems

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<sup>7</sup> The Female Offenders, 1895.

are more common in women than in men. The fact that women are more suspicious than men as well be a factor that might lead to female criminality.<sup>8</sup>

3. **Sociological factor:** Society is pushing her to the verge to commit a crime, when she tries abide by societal norms. Society pushes a woman to behave in certain way but it is not described as a rule in any text, is just the mindset of society that how a women should behave. Inequality is faced by women all over the world in every phase of her life.

Klein mentions<sup>9</sup> “offenders such as shoplifting, abortions, sexual crimes, prisoning of family members, etc., may not only be psychological in nature but also be vied from socio-economic lenses.”

### **HEALTH ISSUES FACED BY WOMEN IN PRISON AND NEED FOR CARE:**

By starting with a question “*Why are women detainees seeking medical services more often than male?*”

It’s a common knowledge that bodily, women and men are entirely different and their biological needs has to be taken care as it has the risk of getting affected more often while compared to male and their physical health.

#### **1. MENSTRUATION OF WOMEN**

In our nation, majority of women prisoners are young, with the age group of 18-55 years. In that case they fall under the menstruation age group. In period of menstruation, accused female need to be provided with good sanitation facilities and adequate menstrual hygiene products. To maintain their health and hygiene they should be provided with their basic needs like sanitary pads etc. but in the reports came as complaints from women prisoners that jail officers charge for sanitary pads. So, the accused female must be provided with sanitary pads and sanitation facility which also comes under health care criteria

#### **2. PREGNANCY OF WOMEN IN PRISON**

If the women were pregnant at time of entering the prison, such women must be provided with needed diet as per national prison manual. And the prisoners who are in postnatal stage should be provided with separate accommodation for maintaining the hygiene and to protect the infant from contagion/disease, for at least a year from childbirth.

Pregnant and lactating women prisoners need to receive advice on their health and food routine under a programme which drawn by a qualified health practitioner. The treatment and nutrition programme should

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<sup>8</sup> Lombroso Cesare, 1895, The female offender New York

<sup>9</sup> The Etymology of Female Crime: A Review of the Literature, 1973.

also include the women prisoners who have given birth to a child recently but not having them with her inside the prison, women who have had a miscarriage and who undergone abortion, because these people should be taken care properly and fed the proper information about abortion during the incarceration, to the extent allowed by the law. They should be able to access the pregnant kits within the prison and pregnant women should be given with the option to take up the work during their pregnancies and in the postpartum period if they choose to do so. Work allotted to them has to be suited to their health conditions.

### **3. NEED FOR GYNECOLOGIST**

If inmates needed to be checked once in a month, concern official authority should take that into account sincerely. Only by assessing their physical and mental needs while admission will help to improvise the facility provided already in the prison. Nowadays there has been increasing risk of pelvic cancer affecting women is going across the world, to prevent this proper care and vaccination should be done. Papanicolaou tests and preventive measures as screening for other gynaecological cancer and breast cancer must be done for female accused on a regular basis. In case of non-availability of female health practitioner, inmates should be transferred to facility in nearest to the prison for the check-ups.

### **4. ADDRESSING MENTAL HEALTH ISSUE**

Mental health issue is not like a normal health issue to be cured and to cure; as we've seen the background for the crime, for women to commit a crime in this society it takes a lot more than what we can imagine. Regardless of gender every human after doing a certain act which he/she knew it was wrong, it causes anxiety and it begins to traumatise them as they live on with the guilt of doing it so. This could lead them to commit another crime or become the mental pressure in their brain which causes several internal damages which can be led to ending their own life.

To prevent this, woman with such issues should be transferred to the mental health institutions where they provide appropriate care for them despite keeping them in prisons, only make them to re-offend. And also, every prisoner must have the access to the psychologists or the female counsellors on a monthly or weekly basis as per their need. Especially first time wrong-doers should be counselled during the admission to stop them from doing another crime.

### **5. SEXUAL AND REPRODUCTIVE HEALTH**

To be in good reproductive health, a person must be able to have a fulfilling, safe and responsible sexual life. Be able to reproduce and have the freedom to choose when and how frequently to do so. WHO says implicit in this are the rights of men and women to be informed of and to have access to safe, effective, affordable and acceptable methods of fertility regulation of their choice and the right of access to appropriate health care

services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy child.<sup>10</sup>

It's not about absence of illness, malfunction or infirmity. Sexual health is a condition of physical, emotional, mental, and social well-being in relation to sexuality. The ability to enjoy joyful and secure sexual encounters free from compulsion, prejudice and violence is essential for sexual health. For sexual health to be attained and maintained, the sexual rights of all people must be respected, protected and fulfilled.<sup>8</sup>

## **6. HIV HEPATITIS C AND OTHER INFECTIOUS DISEASES**

There is high probability of many women prisoners to have HIV while entering prison as women are great risk to have sexually transmitted infections such as gonorrhoea, syphilis and also HIV. This shows that women are acting as sex workers and victims of sexual abuse. Women's who have the habit of injecting drugs by sharing syringe and needles, having unprotected sex with drug partners or engaging in sex work have great risk of having HIV and Hepatitis C.

Prison systems should ensure that prisoners living with HIV or any sexually transmitted diseases should receive prevention, treatment, care and support equivalent to that available outside prison. Women in prison should always have access to condoms, given the possibility of sex within prisons. As a basic rule, sex involving staff and prisoners should be prohibited under all circumstances.

## **7. VIOLENCE AND ABUSE**

Women are three times more affected by physical and sexual abuse than men so most of them are with low self-esteem and confidence. Trauma is both directly and indirectly linked to criminogenic pathway. For this reason, addressing trauma through counselling and psychotherapy is necessary and it's important to identify women's who are victims of violence and abuse. While in prison, women are vulnerable to abuse particularly sexual abuse. Women in prison should be able to see physicians, counsellors when they need, regular sessions should be arranged by the prison in charge. The minority of women who have perpetrated violent crimes or are identified through screening as perpetrators of violence should be provided with interventions to prevent them from being violent in prison and when they return to society.

## **8. SELF-HARM AND SUICIDE**

Research says that women in prison more likely to self-harm than male prisoners.<sup>11</sup> Especially the pre-trial and early periods in custody are a particularly high risk time for self-inflicted deaths. The risk of self-harm

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<sup>10</sup> WHO, 2009b.

<sup>11</sup> Quaker Council for European Affairs, 2007.

and suicide is also increased in the first period after release. Aftercare should be provided to the women at risk.

Should develop strategies to prevent suicide and self-harm and to provide appropriate and individualized mental health treatment to those at risk to form a comprehensive element of mental health care in prisons. Staff need to be trained to detect and assist prisoners who are at risk of self-harm and suicide and provide support and refer such cases to specialists.

## **9. LEARNING DISABILITIES**

There are terms like mental retardation, mental handicap and intellectual disability. WHO defines “A learning disability as a condition of arrested or incomplete development of the mind that can occur with or without any other physical or mental disorders and is characterized by impairment of skills and overall intelligence in areas such as cognition, language and motor and social abilities. This includes people of all ages”.<sup>12</sup> It becomes difficult to treat a criminal with learning disability for the offenders that what kind of punishment can be given and be suitable to them. Many are also victimised and bullied in prison so they have been kept under special surveillance.

### **WOMEN AND THEIR CHILDREN IN PRISON:**

There are a number of problems when it comes to women. Like,

1. Lack of separate jail for women because there is only small ward within prison for women.
2. The population of women prisoners are increasing.
3. The prison manual has been framed by imaging only male prisoners, and problems like sanitation and women’s psychological needs have not been met.
4. There are kids and children below five years of age lodged inside the jail with their mother.
5. Sometimes children are born and grew up inside the jail, and there is no facility for that.

By having all these problems women will be more psychologically affected by thinking about the circumstances where their child is growing. Parents have the responsibility to grow and nurture them in a good environment but when their parents are in jail there is no way for the child to have good atmosphere. But it’s not the wrong of child to grow in such circumstances. When a child is growing up in jail it grows by seeing other inmates their habits, language will automatically be inculcated by the kids and which is highly dangerous for future society. Children should be kept in a way which doesn’t make them feel like they are offenders, and the children who all are residing inside should receive a special diet and regular examination by a lady medical officer at least once in every month. They could be able to contact medical facility as per their need.

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<sup>12</sup> WHO Regional Office for Europe, 2007a.

The Delhi High Court has set up a system where their entire education burden is borne by the state because what we are doing is rendering the children destitute and instead of creating a correctional space, we are providing them with no option but to go into the word of crime. So, I believe even a better approach can be taken towards women and child care in prison.

### **BRINGING THE WORD PRISON REFORM AND MAKING MORE HUMANE:**

What's wrong if they have done a mistake, its human nature to do crimes and mistakes as on their situation but that doesn't mean that they have to be treated ill and they have no right as such of citizens. I suggest that prisoners themselves need to be given some voice and proper legal aid. They can't give any voice in administration of prison. Every prison in India is under the State system and not under the Centre and though the Centre had made modern manual, many states are following their own ancient manual.

So, we need to bring just the outline of the modern manuals into force in every state so that it results more humane and respects human rights. "Any prison reform should be an element of broader criminal justice reforms". Investigation, prosecution, adjudication imprisonment and social rehabilitation are essential elements and interconnected so if effectiveness of one is improved the overall result will be enhanced. We have had laws that give higher and longer sentence and legislature can think about restructuring it as also overcrowding should be addressed in a broader sense.

We should see what are the fundamental and human rights of a prisoner. Prisons don't adopt most of the social scheme for example if you are in jail, you can contest an election in India but cannot vote. There is no reason to take away the voting rights as it's a universal adult franchise as they are citizens of our country, and prisoners have a place in our constituency. So, we have to treat them as their basic rights remain and instead of prison reform, we have to focus more on entitlement of rights the state obliged to provide.

### **WHAT PREVENTIVE MEASURES CAN BE TAKEN BY THE MINISTRY:**

Government of India has introduced various Committees, Commissions and Working Groups to analyse and suggest improvements in prison conditions and administration. They are:

- All India Jail Manual Committee, 1957.
- Working Group on Prisons, 1972.
- All India Prison Reforms Committee, 1980-83 (Mulla Committee).
- All India Group on Prison Administration, Security and Discipline, 1986 (R. K. Kapoor Committee).
- National Expert Committee on Women Prisoners, 1987 (Justice Krishna Iyer Committee).

In 1983 the Committee under the chairpersonship of Justice A. N. Mulla submitted a report containing 658 recommendations out of which 35 exclusively related to women in incarceration. These include incarceration



of women prisoners in separate exclusive institutions/annexes, staffing women prisons with women personnel only and probation to be extensively provided to women.<sup>13</sup>

In 1986 the All India Group on Prison Administration, Security and Discipline popularly known as R. K. Kapoor Committee was constituted to examine and review various aspects of administration and management of prison, exclusively for security, discipline and recommend measures for improvement. The Committee recommended better communication systems, watch towers, wire fencing, raising of height of perimeter walls, metal detectors, dog squads etc. It also recommended Close Circuit Televisions (CCTVs) for monitoring activities along the perimeter wall, rooftops and main gate area etc.<sup>14</sup>

In 1987, the chairpersonship of Justice Krishna Iyer the National Expert Committee on Women Prisoners was setup to increase the situation of women in jails and made various recommendations. Some of them include:

- Women prisoners should be informed of their rights under the law.
- Only women constables should conduct searches on women prisoners.
- Women doctors should do medical check-up of women prisoners as soon as they are admitted to prison.
- Women prisoners should be allowed to contact their families and communicate with their lawyers, social workers and voluntary organisations.
- Women prisoners should be allowed to keep their children with them.
- Separate jails should be provided for women.
- Special prosecution officers should be available to present the case of women prisoners.<sup>15</sup>

The Government of India, as per the direction of the Hon'ble Supreme Court,<sup>16</sup> constituted the All India Model Prison Committee headed by Director General BPR&D to prepare a Model Prison Manual. In December 2003, the Model Prison Manual was prepared and distributed to all the State Governments/UT Administrations for adoption of it in order to make the superintendence and management of prisons more powerful. By passing time, there's need to revise and update to keep the Manual up to date. Consequently, in December 2014 the Ministry of Home Affairs constituted an Expert Committee to revamp and update this Manual.

The 2016 update of the Model Prison Manual places a stronger emphasis on prison computerization, after-care services especially for women prison, prison inspections, rights of death sentenced inmates, repatriation of foreign inmates, and enhanced focus on prison correctional staff. Ministry of Home Affairs vide advisory dated 4th May 2017 advised the State Governments/UT Administrations to ensure basic uniformity in prison

<sup>13</sup> [http://mha1.nic.in/PrisonReforms/pdf/PRVOil\\_121%20to%20160.pdf](http://mha1.nic.in/PrisonReforms/pdf/PRVOil_121%20to%20160.pdf) as retrieved on 04.09.2017.

<sup>14</sup> Advisory no. 17014/3/2009/-PR dated 17<sup>th</sup> July 2000 issued by ministry of home affairs.

<sup>15</sup> Advisory no. 17014/3/2009/-PR dated 17<sup>th</sup> July 2000 issued by ministry of home affairs.

<sup>16</sup> Rama Murthy v. State of Karnataka, AIR 1997 SC 1739.

rules and regulations by adopting the existing revised Prison Manual, 2016.

In 2007, a National Policy on Prison Reforms and Correctional Administration was created, and it included a number of instructions pertinent to women prisoners, including protecting prisoners' human rights and preventing overstays for pending cases. Women convicts will be safeguarded against all forms of exploitation. Work and treatment plans must be created to meet their unique demands.

### **CONCLUSION:**

Has the prison environment a great negative impact on women than men?

The prison may not have the positive impact on other genders too, but women prisoners haven't got any facilities for them or any proper medical treatment for their health issues. Due to the dominance of population of the male prisoners, the regulations and facilities available are mostly favourable for men in prison. The facilities which are available in prison are made for the basic needs of men not the women, women have completely different needs when compared to men. To facilitate the health care in a prison assessing the mental and physical health of an incarcerated woman is important.

Mainly the children who are staying with their mothers in prison should be taken care properly which will result in a future environment and the pregnant women must be looked after seriously as the risk of losing child and also the mothers. The crime was only committed by the women and there's no reason for the foetus to undergo any. The health care which are available for them should be for take care of them properly and not for the account of doing it as a duty. Mental health of the post-natal woman cannot be counselled by the practitioner who was appointed for a man.

From the research and analysis of various reports and facts collected, a health care for incarcerated women should be facilitated and an education centre for the children who are in prison along with their mothers should be available for them to access whenever they need to.

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