



Women under-trials: An empirical probe into the functioning of the mechanism of bail

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Abstract

Imprisonment adversely affects both men and women but it tends to affect women more adversely than men. Women under trial prisoners form a special category of women prisoners who have to endure the prison life despite of their guilt not proven in the court of law. Women under trial find the experience of imprisonment more difficult than those sentenced. The trial process is slow and costly. The prolonged and uncertain stay in the prison during trial makes their condition pathetic. In such a circumstance the provision of bail comes as a boon to women under trial prisoners. It is an alternative to detention during trial. The Indian Criminal Procedure Code contains a special provision for the release of women under trials on bail. Notably, despite of this special provision, women under trials account for 72 percent of the total female prison population of the country. The exceeding number of women under trials invites social, legal and human concern. It is with this backdrop that this paper aims to probe empirically the functioning of the mechanism of bail in the case of women under trial prisoners. It is based on the study conducted on women under trial prisoners of Aligarh District, Uttar Pradesh (India). The study finds that due to higher level of illiteracy, ignorance, economic dependency, lower and subordinate position in the family and society and other social facts, women under trial prisoners, despite the special provision, languish in prison for an uncertain period of time which leads to serious consequences.

Keywords: Women under trials; Aligarh; India; Prisoners; Prisons.

Introduction

Law is a formal instrument of social control, the purpose of which is to ensure all that is constitutionally guaranteed. In countries like India, which endeavours to bring about social transformation at a fast pace, a law is being employed not only as a means of social control but also as a lever of social change. Over the years it has experienced continuous rationalization and the spread of the ideals of individualism, freedom, equality, individual rights, social justice and social welfare. Furthermore, there is increasing rationalization of law in the administration of justice as well as in the legal rules. The rationalization of the legal rules has been brought about by the growth of systematic legislation in order to deal with the social problems of a developing industrial society (Bottomore, 1975).

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Indian constitution in tune with international efforts provides certain basic principles to govern the criminal justice system. Of these, two principles, i.e. presumption of innocence and the concept of due process, are related to human dignity, life and liberty. The former refers to the principle that an individual is alleged to be innocent till the contrary is proved against him/her. The latter refers that no person shall be deprived of his life and liberty except according to the procedure established by law. Both the principles are enshrined in Article 21 of the Indian Constitution (whose scope has been extended by interpretation by the Supreme Court) and in Article 14(2) and Article 9 of the International Covenant on Civil and Political Rights, 1966 (Joshi, 2006). These constitutional rights have been faithfully incorporated in our Criminal Procedure Code, 1973 as a mandatory procedure for the executive authorities in order to benefit the accused. However, much of the legislation seems to remain primarily symbolic or ritualistic. The effectiveness of law lies not in what it contains as statutory provision but what it does for the common man. It is doubtful whether it has been successful in reaching its objectives.

The criminal justice system in independent India demonstrates a paradigm shift from the presumption of innocence to presumption of guilt. It is unfortunate that in India despite the constitutional provision of presumption of innocence, more than 60% of the prison population is being held pre-trial i.e. custodial rather than punitive. This is an astonishingly high proportion, far higher than found in most other jurisdiction. Dostoyevsky aptly remarks, “The degree of civilization in a society can be judged by entering its prison” (Coyle, 2000). It is reported that in the beginning of 2010, around 3,58,000 people were lodged in jails against a sanctioned capacity of 2,45,000. Out of the total jail population of 3,58,000 prisoners, only 98,000 were convicted. Whereas 2,60,000 (73%) were under-trials. Such a situation is one of the many examples of ineffectiveness of law in India, which is brought about because of its inaccessibility by the masses.

Under trials though should be presumably innocent still continue to suffer the hardships of prison life. It causes the loss of most precious human possession *viz. a viz.* liberty. Overcrowding, corruption, violence, contact with hardened criminals, inhumane living conditions, abuse of power, disease (psychological and physical), and neglect are only a few of the salient features of prison. The chances of acquittal definitely become remote in the case of a person detained while facing trial. An under-trial prisoner is of little value to his lawyer during the preparation of his defence. He cannot look for witnesses or personally contact anyone who might be able to assist in his trial. In many cases an under-trial prisoner cannot earn money to employ a counsel and meet other expenses connected with his defence. As a result, under-trials languish in jail for an unspecified time period. Every passing moment strengthens their bitterness and disillusionment towards the system. Imprisonment causes tremendous suffering not only for the prisoners but also for their children and other dependents (Singh, 1997).

Problems of Women under trial prisoners

Although imprisonment adversely affects both men and women, it tends to impact women more adversely. This is on account of the fact that women differ from men socially, psychologically and physically. As such, women in prison also differ from their male counterparts. They are mostly characterized by their:

- a. Different patterns of offending from men and lower risk to the public;
- b. Role as mothers and primary carers;
- c. History of psychiatric illness; and

d. Effects of the proportionately low numbers of women prisoners (Marsh, 2004).

It is evident from the criminological literature that women's pattern of offending is different from that of men. Their status within the family and society plays a determining role in their delinquency. In most cases they are first time offenders or serve as an accomplice. They are less likely to be recidivists, hardened or professional criminals. They commit less crime, are less dangerous and pose almost no threat to the society. Few women are a real risk to the public (Silvestri & Dowey, 2008).

The majority of the women in prison are mothers. They are more likely to be the primary caregivers of dependent children than their male counterparts. The National Association for the Care and Resettlement of Offenders found that a higher proportion of the children of women prisoners displayed behavioural problems, including sleeping and eating problems, bed-wetting, becoming withdrawn and problems in developing overall social skills. Furthermore, such children are more likely to turn to delinquency (Cunningham & Baker, 2004). In order to address this vulnerability, in India, women prisoners whose children have not reached the age of six years can keep such children along with them in prison (Shukla, 2005). However, studies have revealed that the atmosphere in prison is not at all conducive to the growth and development of young children during their formative years (Pandey & Singh, 2006).

An overemphasis on security and discipline, lack of holistic needs based programmes, inadequate standard of care due to staff shortage are only some of the factors which play a significant role in bringing about psychosis and neurotic disorders among women prisoners. Women under trials find the experience of imprisonment more difficult than those sentenced. The trial process is slow and costly. The prolonged and uncertain wait for their charges to be processed through court accompanied with lack of contact with loved ones often make them prone to suicide and self-harm (Silvestri & Dowey, 2008). Women prisoners experience helplessness as they receive far less support from their partners than do the male prisoners. They are unable to defend themselves and are not aware of the ways and means of securing legal help and thus totally at the mercy of jail officials, who often fail to show any understanding of their problems (Siddiqi & Ranganathan, 2001).

With almost 96% of prisoners being male, it is not surprising that the prison system has been dominated by the needs of males rather than female prisoners. The Committee on Women Prisoners (1987) observed that the malpractices and delinquencies existing in prison tend to affect women more adversely than men. This is on account of the fact that women are still a marginal group in the custodial population and tends to be less vocal, less demanding and violent in demonstrating against custodial or other injustice (Committee on Empowerment of Women (2001-2002) (Thirteenth Lok Sabha). The committee after visiting many women prisons stated that, the prisoners as well as the prison staff suffer from what was called by the Supreme Court 'the pathology of misinformation or ignorance about the rights and limitations'. The impression gathered by the committee during their visits to different jails of the country was that the major complaints of women in detention were the delay in the trial and disposal of appeals. This often leads to the callous disregard of human rights. Similarly, courts also fail to show proper awareness of women forming a special category. They have been mentioned by the committee as 'a low dispositional priority' and receive routine neglect. The larger under-trial figures among women prisoners as compared to men prisoners is sufficient enough to illustrate that judicial processes have outcast the women in "a custodial limbo" (Siddiqi & Ranganathan, 2001). The majority of female prisoners were under-trials. They languish in

jails for offences, for which sentences would have been far less if they had been convicted. The committee recommended that there was an urgent need for the simplification of bail procedures for women under-trials (Committee on Empowerment of Women (2001-2002) (Thirteenth Lok Sabha).

In view of all this, the clear message is that women should be sent to prison only when there is absolutely no alternative. Nothing could be more unjust than detaining women in prison as an under-trial. Bail is an alternative to pre-trial detention. Release of women under-trials on bail can be a humane alternative to their detention before conviction. The Code of Criminal Procedure, 1973 when dealing with the question of bail, does take into account the fact that women deserve special consideration. While directing the court not to release a person on bail where he is accused of an offence punishable with death or with imprisonment for life, the code [Section 437(1)] provides that this prohibition shall not apply where the accused is a woman. At present Section 437(1) of the Code of Criminal Procedure, 1973 reads as under:

when any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but –

1. such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.
2. such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence.

Provided that the court **may** direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is a sick or infirm (Law Commission of India, 1989).

This proviso was inserted keeping in view the status of women in India and to avoid women being kept in custody as far as possible. However, in general, there is ambiguity in the interpretation of the word ‘**may**’ used in the provision while dealing with the cases of release of women under-trial prisoners on bail. In the case of *Durga vs. State of Rajasthan*, 1981 and *Bimla vs. State of Haryana*, 1982, both the accused were young mothers. It was submitted that in the interest of justice and in the interest of their children it would be appropriate to release them on bail (Ramakrishna, 2008). A perusal of the judgment in *Shakuntala Devi vs. State of Jammu* indicates that the primary reason for which the first proviso to Section 437 of the new code was held to be mandatory was that the said proviso was a beneficial provision. It was decided that: “where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise that power ought to be exercised and the court will require it to be exercised” (Ramakrishna, 2008, p. 189). On the other hand, in the case of *Pramod Kumar vs. Sadhna Rani*, the mother-in-law of the deceased who was charged with murdering her daughter-in-law was denied bail as she was the main accused according to the dying declaration. The husband of the deceased was

however granted bail on the ground that in the dying declaration he, in fact, tried to save the deceased (1989 Cri. L. J. 3634). The recent case of claiming bail by Kanimozhi, Member of Parliament, who is one of the accused in 2G Scam case based on this proviso did not prove to be of much help and other instance such as the duration for which she was in jail and the tedious behaviour of CBI by not opposing the bail plea are supposed to have favoured her release on bail (The Legal Junction, 2011). Thus, it could be said that in the above mentioned cases, Section 437(1) of the Cr.PC, 1973 was treated as a discretionary and not a mandatory provision.

It goes without saying that this Section was never meant to grant bail to all the women accused of non-bailable offences. Taking into consideration the facts that women (i) have less chance of fleeing from court appearances and tampering of evidences and witnesses; (ii) have special physical and psychological needs; (iii) many of them are mothers and have young dependent children; (iv) they are the pivot of the family and primary caretaker; (v) they often face problems of maintaining contact with their family during imprisonment; (vi) they are vulnerable to custodial abuse, violence, rape and inappropriate surveillance; (vii) they have higher level of depression, anxiety and mental illness as compared to the general population and male prisoners; (viii) they have higher level of illiteracy, ignorance and economic dependency and (ix) they have a low and subordinate position in society, Section 437(1) of the Cr.PC, 1973 is an enabling and beneficial provision which desires the court to be liberal in the grant of bail to women and to make good and appropriate use of the Section as far as possible.

Unfortunately, despite the fact that women in prison are different from their male counterparts and the existence of special provision for the release of women under-trials on bail, it is found that the percentage of women under-trials like their male counterparts has always exceeded that of convicts. The statistics in India show that at the end of the year 2008, out of the entire female prison population of 15,929 a total of 11,402 comprised of under-trials (Government of India, 2008). Thus, despite the special provision women under-trials account to 72 % of the total female prison population of the country. It is unfortunate that bail, specifically in the case of women under-trials, is a neglected aspect of research in India. The exceeding number of women under-trials invites exploratory research with sociological insight. It is with this backdrop that the present study aims to probe empirically the functioning of the mechanism of bail in the case of women under-trial prisoners.

Present Study and Methodology

The work aims to understand and present the experiences of the women under-trial prisoners from their own viewpoint and to explore the social facts which surround those experiences. The objective of the present study is to explore the efficacy of the beneficial provision of Section 437(1) of the Cr.P.C., 1973, for women under-trial prisoners.

The study is explorative in nature. It was decided that for the purpose of the study it would be appropriate to select a jail from the state of Uttar Pradesh as the available statistics revealed the following facts regarding the state. Uttar Pradesh reported the:

- a) Highest overcrowding of prisons;
- b) Highest number of under-trial prisoners;
- c) Highest number of women under-trial prisoners with children; and
- d) Highest number of children living in prisons with their mother.

This study focuses on women under-trial prisoners. These women are brought to the prison after their arrest and their stay in the prison depends on whether they are granted bail by the court or not. Bail can be granted at any stage of the criminal proceedings. In this study, the focus is on the grant of bail before conviction.

The study was conducted on women under-trial prisoners of the Women Jail of Aligarh District, Uttar Pradesh (India). Out of the 85 women inmates, 23 were convicted and 62 were under-trials. For the purpose of the study, it was decided to include all the women under-trials. However, there were some cases in which more than one woman was arrested. They either worked as a group or they belonged to the same family. In order to avoid duplicity only one woman for a particular case, from the group or family was included in the sample. In this way 12 women were eliminated and the sample got reduced to 50.

The study was conducted by employing the following techniques of data collection:

- (a) Informal interview carried out with the help of open-ended questions, scheduled to discuss matters relating to the economy, family, alleged offences, the duration of their stay in prison, status and outcome of the bail application and the loss incurred due to imprisonment.
- (b) Demographic and official details were obtained through secondary sources. Official details included the IPC (Indian Penal Code) Sections under which the woman under-trial prisoners had been booked, along with the records of the meetings with family and friends.
- (c) The information gathered was supplemented by observation.

All information gathered has been presented in tabular and graphic form and simple device of percentage has been used to understand it.

Results and Discussion

1. Demographic Profile

a. Age

During the interview it was learnt that respondents belonging to different age groups were affected differently about not being released on bail. In the prison due to overcrowding the convicted and under trial prisoners were housed together. This exposed the young (14-25 years) respondents to criminal behaviour. Moreover, juveniles were also housed in prison because of the non availability of juvenile homes in the district. Respondents (26-35 years) had dependent and unmarried children. They had children staying with them in prison as well as some with children staying outside with their father, grandparents or relatives. For the respondents of this age group, separation from their children was the greatest pain of staying in prison. Most of the respondents belonging to the age group of 36-45 years shared less than cordial relation with their in-laws and husband. Their greatest worry was that the family would make no effort to get them released on bail. Financially and emotionally insecure, they were afraid of fighting the legal battle alone. Respondents in the age group of 46-55 years had over the years, managed to have little savings for the education and marriage of their children. It was distressing for them that the amount being spent on lawyers and courts and with great anguish they complained that even after spending huge amounts of money they were unable to seek bail. Respondents above the age of 56 years were either widow or their husbands were

also arrested for dowry related death. There was no one left in the family to arrange for bail. They experienced illness and physical disabilities which were specific to them because of their age and which was not appropriately taken care of during their stay in prison. Most of the respondents above the age of 66 years were a liability for the family and hence no sincere effort was made by the family members to get them released on bail.

Table – 1

Demographic profile of the respondents

Age	N	%
14 –25	06	12
26 – 35	13	26
36 –45	13	26
46 – 55	07	14
56 – 65	07	14
66 +	04	08
Marital status		
Unmarried	02	04
Married	34	68
Widow	13	26
Separated	01	02
Education		
Illiterate	29	58
Literate	11	22
Primary	01	02
Middle	Nil	Nil
High	05	10
Inter	03	06
Graduate	01	02
Occupation		
Housewife	27	54
Service	01	02
Professional (self-employed)	02	04
Agriculture	05	10
Labour	11	22
Maid	03	06
Student	01	02
Family		
Nuclear	36	72
Joint	14	28

b. Marital status

In the case of married respondents if the husband was also detained, women were put in a disadvantageous position. The in-laws keeping in view the expensive process of bail preferred to get their son released first. It was believed that, if the son is released he can arrange for a loan, run after lawyers and courts and will make an earning, whereas, the release of a woman prisoner, would be of no help to the family. The position of a woman, as compared to her husband, in the case of release on bail was very much similar to her inferior and subordinate position within the family and society. Ordinarily, women are a discriminated and marginalized lot, but if they happen to be widows they are further marginalized. These respondents complained that since their husbands were not alive, children were indifferent and callous in getting them released on bail. Most often, they did not visit them. Hence, they had no knowledge regarding their application for bail and were waiting in the dark endlessly. For the unmarried respondents, the stigma of imprisonment was likely to result in the loss of every chance for a decent marriage.

c. Education

The majority of the respondents were illiterate. Even the few who were educated were not adequately aware of the laws and the legal procedure. Unfortunately, this was true not only of the respondents but also of a large number of the educated people in our society. The lack of legal education of the general public, and women in particular keeps their legal awareness at a considerably low level. Lack of education placed the respondents at a disadvantageous position while negotiating with the criminal justice system. Most of them had no knowledge of the Indian Penal Code (IPC) sections under which they had been booked. They were unaware of their rights as women prisoners, as under-trials and the bail processes. Lack of education and awareness subjected them to exploitation, neglect, callousness and cruelty by the warders and prison officials.

d. Occupation

The majority of the respondents did not have a distinct occupation and hence no separate and independent earning. Twenty seven (54%) of the respondents were housewives. A women's contribution to household and family is enormous (in both urban and rural families) and yet women continue to be oppressed both within and beyond the home environment. It was learnt during the interview that the main role of these respondents was to cook, look after children and take care of other family members. They were overburdened, exhausted and excessively strained. However, their work was economically unrewarding and emotionally unthankful. It was considered as an extension of their natural activities and not as a conscious human labour. Their hard work was believed to be devoid of individual talent, skill, interests and intellectual alertness. Such a perception, led the family members to view the respondents as a non-entity who can be easily substituted. To get these respondents released on bail was in all likelihood an expensive deal. Five (10%) of the respondents helped the male members of the family in agriculture. Their working in the farm was seen as a mere extension of domestic work and regarded as subordinate and secondary to men's work. Despite their participation in the family occupation the respondents informed that they were unaware of the family earnings and expenditure. Surprisingly, the respondents stated this as a matter of fact and had no grievance regarding their position as an unpaid labourer. Moreover, they were happy to be relieved of the responsibility of managing the money matter of the family.

Eleven (22%) and three (6%) of the respondents worked as labourers and domestic maids respectively. The respondents informed that, there is an increase in the migration to the cities due to the decline in access to land for cultivation, fodder for cattle, and minor forest produce for consumption and sale. Environmental degradation has led migration of either the male member of the family or the entire family. In both the situations there is a substantial demand on the women's time and energy. Women are either left behind to fend for their families in which case they have only the dependent children and elderly parents to pursue their release on bail or they migrate to the city along with their husband and supplement the family income by working as domestic maid or labourer, in which case besides the bail amount, availability of surety is a great hurdle in their release on bail. One (2%) and two (4%) of the respondents were government employees and self-employed, respectively. It was learnt from the respondents that even while attitudes towards a working wife's or daughter-in-laws has changed, the attitude of husbands and in-laws towards her position at home, her rights and privileges, duties and responsibilities have comparatively not changed much. It is significant that the wife's traditional attitude towards her own position is still appreciated and expected by the family and society and proves beneficial for marital harmony. While a man exists in his own right, a woman exists only in relation to him and by and large, despite her employment her position within the family is in no way different from that of a housewife.

e. Family

India is said to have the tradition of joint family. However, Table - 1 shows a different picture. An overwhelming majority of the respondents belonged to nuclear family whereas only a small miniscule belonged to joint family. Out of the fifty respondents, thirty-six belonged to nuclear family and only fourteen belonged to joint family. Most of the respondents lived in nuclear families as most of family units had independent and separate earnings. Common ownership of the sources of production and consumption belonging to the entire family was uncommon among them. Their families were structurally nuclear but functionally joint. Respondents of both (nuclear and joint) the types of family reported to have experienced a similar type of power relationship within the family which in all likelihood not only contributed to their maladjustment and hostility but also to their prolonged stay in prison as under-trials.

2. Class and caste profile of the respondents

Family occupation here refers to the occupation of the male bread winner of the respondents' family for example occupation of the father, husband or the son. The majority of the respondents' family belonged to rural economy i.e. agriculture and manual labour. These sectors contribute insignificantly towards the family income and most of the families dependent on it were economically poor. An overwhelming majority of the respondents' family belonged to the lowest economic strata. Out of the 50 families 30 families were economically deprived and marginalized. Uncertain employment and low wages characterized their lives. Table 2 also shows that an overwhelming majority of the respondents belonged to the marginal castes. Out of the 50 respondents 33 belonged to the lower castes whereas only 17 belonged to the general castes. Caste status was an important identifying mark among the respondents. It determined their inter-personal relationship with other inmates and also with the jail warders. Respondents belonging to the marginal castes and class background experienced a prolonged encounter with the

criminal justice system and their under privileged position placed them in the multiple marginalization of caste, class and gender.

Table – 2

Class and caste profile of the respondents

Family occupation	N	%
Agriculture	11	22
Business	09	18
Labour	18	36
Service	08	16
Self-employed	04	08
Monthly Family Income		
3000 – 10000	30	60
11000 – 20000	09	18
21000 – 30000	08	16
31000 – 40000	02	04
Above 40000	01	02
Castes		
Castes (SC, ST, OBC)	33	66
General Caste	17	34

3. Length of stay of the respondents in prison

An analysis of the criminal justice statistics would show that a vast majority of the prison population consists of under-trials. The attitude to pre-trial detention can be an interesting indicator of the attitude in any society to the judicial process. The prison population in India is approximately 22 per lakh of the population, which is very small as compared to other countries. The world average is about 100 per lakh. What is unusual about India is that, over 70% of the people held in prison in India are awaiting trial. A significant number of the men and women have been held in prison for periods in excess of two years. Prisons are not considered priority areas by any section of the machinery. Little emphasis is placed on what really needs to be done inside prison (Morgan, 2000).

Table – 3

Classification of the respondents on the basis of the length of stay in prison

Months	N	%
1 – 10	31	62
11 – 20	10	20
21 – 30	06	12
31 – 40	03	06
Total	50	100

Delay and denial of bail resulted in the prolonged stay of the respondents in prison. 6 (12 %) of the respondents were in prison for more than 20 months i.e. more than one and a half year whereas 3 (6%) of the respondents has been in prison for more than 30 months i.e. more than two and a half years. The Major lament of the respondents was that the lawyers are inconsiderate and greedy. They do not perform their task even after receiving the money. They fail to understand the pains of imprisonment and try to drag the case unnecessarily. There are few who are sincere and honest but they are not popular and people generally do not know them. Out of the fifty respondents forty-six respondents applied for bail to the District Court. Out of these 26 bail applications were rejected by the District Court. It was noted that in most of the cases the counsel sought the grant of bail on the basis of the physiological issues of women, such as menstruation made their further stay in the prison strenuous.

The counsels seemed to identify women with their physiological features rather than with their individual identity and role within the family and society. They did not seek the help of the proviso to Section 437(1) of the Criminal Procedure Code (Cr.PC) in order to get the respondents released on bail. Further, many bail applications were found to be rejected by the District Court without recording any reason for the refusal. It appeared that the grant of bail seemed risky to the court that was rarely willing to shoulder this responsibility. Refusal of bail was comparatively safe and judges preferred to play safe rather than to take the risk. Factors such as motherhood, children staying along with the respondents in prison, gender, age, illness, nature of offence, past conduct, apprehended behaviour after release, delay cause by way of trial, deplorable jail condition, loss of personal liberty, burden on public exchequer and a number of interests involved in the case were often ignored. Further, poverty was an important factor restricting contact of the respondents with the family members.

Lack of contact kept the respondent and their family members in complete darkness about the charge, the case or the counsel. It also prevented them from employing intelligent counsel. As such, respondents were either without a counsel or their case was referred after much delay to the unwilling and uninterested legal aid lawyers. Defendants were made to wait endlessly before the bail application was moved to the court. The respondents were advised by the counsel that it was unwise to apply for bail at the time when the counsel was not well acquainted with the judge and the bench who was supposed to consider the bail application. The counsel's terms with the judge was an important factor determining the grant or rejection of bail and consequently the length of stay of the accused in prison. The respondents reported that in the case of dowry death, the bride's family does not turn up in court on the mentioned date because of which the case gets dragged for a long period of time. By doing so, they try to compel the in-laws for out of court settlement and demand huge amounts.

4. Visit by the family members of the respondents

Family is not just a concept but an emotional experience. The family has been the pivotal institution around which Indian society has derived its strengths and forged its future. The well being of a nation or a society depends largely on the well being of its families. What occurs in the family affects society and vice versa. Thus, the family provides the foundation that helps maintain the physical and psychological integrity of individual members.

Table – 4

Classification of the respondents on the basis of visit by the family members

Visit by the Family Members	N	%
Family members regularly visit in the prison	14	28
Family members visited only once	11	22
Family members contacted in the court	08	16
No contact with the family members	17	34
Total	50	100

There were 17 (34%) respondents who had no contact with their family members since their imprisonment. 11 (22%) respondents reported that they were visited by their family members only once during their stay in prison whereas, 8 (16%) respondents reported that their family members contacted them in the court. When asked as to why the family members did not visit them, the respondents reported that:

- a. They belonged to far away rural areas. It was very expensive for their families to travel such a distance. Further it also meant the loss of their daily bread as they earn their livelihood on a daily basis.
- b. The family members had adjusted to the absence of the respondents within the family. To have someone in prison was like losing him/her to death.
- c. Meeting in the prison was expensive. Family members preferred to spend their hard earn money in settling the case rather than to waste it bribing the men at the gate.

5. Children of the respondents

Table – 5

Gender and age wise classification of children living with the respondents inside the prison

Age (Months)	Male	Female
0 – 12	01	04
13 – 24	03	01
25 – 36	01	02
37 – 48	-	01
49 – 60	-	-
61 – 72	-	02
73 – 84	-	01
Total	05	11

Table – 6

Gender and age wise classification of dependent children of the respondents living outside the prison

Age (Years)	Male	Female
1 – 03	05	02
04 – 06	11	09
07 – 09	14	14
10 – 12	10	11
13 – 15	06	10
16 – 18	10	03
Total	56	49

There were 16 children staying in prison with the 10 respondents. As mentioned by Bharucha (2005), Pandey and Singh (2006) and the report on the Children of Women Prisoners by National Institute of Criminology and Forensic Sciences (NICFS), New Delhi and Tata Institute of Social Sciences (TISS), Mumbai (Shukla, 2005), the atmosphere within the prison was not conducive to the normal growth and development of children. Children were living in difficult conditions and suffered deprivation relating to food, health care, accommodation, education and recreation. There were no programmes for the proper bio-psycho-social development of children in the prison. Twenty eight (56%) respondents had dependent children outside prison. Mother's stay in prison victimizes the children in several ways.

As mentioned by Cherukuri (2008), the respondents of this study also expressed that the separation from their children was the greatest pain of staying in prison. They feared that the children would go astray and would be pushed towards delinquency, ill-treated, exploited and abused. The situation was worse for those children whose father was also in prison. Such children had to put up with lots of difficulties especially in families where there was no responsible adult person to take care of them. Those with relatives lived at the mercy of their kin who have their own families and children to look after. They are separated from their siblings and miss them while their mother is in prison. To add to the misery, the father may remarry or take to alcohol. Children have to put up with step-mother and sometimes step-brothers and sisters are also introduced in their life. The family makes no effort to bring the children to meet the mother. In some cases family cannot bear the cost of the transport while in others they feel it is not worth taking the trouble.

6. Release on bail

There are certain sections in the Indian society that has suffered from social and economic disadvantages. Women, who constitute about one half of the total population, have also suffered from various social, cultural and economic disadvantages. They suffer from a low socio-economic status within their own families and within the society. Under these circumstances the legal system alone cannot be of much help to them. The Table 7 shows the classification of respondents on the basis of the factors which restrict their release on bail despite the proviso of Section 437(1) of Cr.P.C.

Table – 7

Classification of the Respondents on the basis of the Factors which restrict their release on Bail

Factors which restrict release on Bail	N	%
Widowhood	11	22
Imprisonment of husband	08	16
Imprisonment of family members	07	14
Adversarial nature of the bail system	05	10
Prolongment of the grant of bail	04	08
Unavailability of effective legal aid	03	06
Family prefers not to apply for bail	02	04
Family prefers to get the male members released prior to the female members	02	04
Unjustified arrest	02	04
Inability to furnish sureties	01	02
Touts	01	02
Total	46	92

Table 7 shows that out of the 46 respondents who were not released on bail, 11 respondents held that widowhood restricted their release on bail. They suffered from special economic, social, physical and psychological disadvantages. They faced mistreatment within their family and were seen as an unwanted claimant on ancestral property. Young widows were most vulnerable to mistreatment. Almost all of them lacked the support of their parents or brothers. Eight respondents held that the imprisonment of their husband restricted their release on bail. They belonged to traditional patriarchal families, exhibiting male dominance and female subordination. They were a non-entity within their family and their existence was acknowledged because of their husband. Seven respondents alleged for dowry related crime, held that imprisonment of almost all the family members particularly the adult male members restricted their release on bail. There was no one left in the family to fight the long and expensive legal battle. The respondents and their family members depended for their release of their friends and distant relatives who were often indifferent to their plight.

Five of the respondents held that the adversarial nature of the bail system restricted their release on bail. In India, where pre-trial custody may be extremely prolonged, custodial remand decisions are a very serious affair. Bail hearings should in such circumstances be inquisitorial, rather than adversarial. In an adversarial system justice is rounded on proof and not on truth which in turn depends upon the strength of the party. Four respondents held that it is the prolongment of the grant of bail which restricted their release. Several factors have combined to make the process of the grant of bail an unduly long process. The intricacies of the procedures, the ingenuity of lawyers in dragging the matter and the indifference of the judges are some of the factors. However, the chief reason seemed to be the existence of a plethora of laws, sometimes more or less contradictory. Three respondents held that the unavailability of effective legal aid restricted their release on bail. The lawyers who take up such duties are paid fixed small

honorarium which needs to be seriously supplemented by taking up private cases. It is not surprising that the interest, efficiency and commitment of such lawyers are tilted towards the private cases rather than serving the impoverished prisoners.

Most of the respondents reported that the bail process was expensive, long, tedious and uncertain. It was unwise to try to release on bail instead of applying for bail they preferred to opt for out of court settlement. It was also learnt that the release of male family members (prior to female members) was important for the family from the economic viewpoint. Two respondents held that the unjustified arrest by the police coupled with the system of placing the entire burden of proof on the police, restricts their release on bail. The police often looks upon imprisonment as an easy solution and make liberal use of the power to arrest. In order to justify the unjustified arrest the police resort not only for the gathering of evidence but also to the manufacturing of it. One of the respondents held that inability to furnish sureties restricted her release, although bail was granted to her. A respondent held that she was alleged of bail jumping because she acted on the advice of the tout and was rearrested. The alleged bail jumping was restricting her release on bail. Four respondents who were granted bail and were likely to be released soon held that the material sources at the command of an accused play an important role in release on bail. It was noticed that affluent respondents were able to secure release on bail with great ease.

Conclusion

In the light of these findings, the present study indicates that women in India lead subservient lives in the male dominated society. Gendered power relationships in the family not only shape the crime of a married woman but it also designs way of disciplining them. The denial or delay in release on bail is an example of such disciplining. They are first indicted by the social machinery which is then followed by the legal machinery. The law puts the stamp on what is decided by the society. They face law not as an individual but come to it wrapped up in their socio-cultural baggage. Indigenous facts are not emphasized by the legal machinery of the lower courts in the districts of India. The knowledge that can be used to assess her release on bail are selectively employed. Important facts such as pregnancy at the time of the event or young children likely to accompany her in prison or going astray during the incarceration of their mother are not mentioned in the record. As such women should be sent to prison only when there is absolutely no alternative.

Whether the legal system is primarily adversarial or inquisitorial, bail hearings should be inquisitorial, with the magistrate inquiring into all the facts and circumstances relevant to the decision. This should be done even if the accused is not legally represented. Further, initial hearings leading to decision on remand in custody should be very thorough. It should acquire the same importance as that of sentencing decisions. In countries such as India where pre-trial custody may be extremely prolonged, custodial remand decisions may be more serious in its consequences for the defendants than the sentencing decisions (Morgan, 2000). Under an adversarial system like ours, the courts insist on the search for proof rather than the search for truth. The Malimath Committee observed that the judge in his effort, to remain neutral never takes any initiative to discover the truth. He does not correct the aberrations in the investigation or in the production of evidence before the court. As the adversarial system does not impose a positive duty on the judge to discover the truth, he plays a passive role. A good trial judge needs to have a 'third ear', that is to hear and comprehend what is not said (Nariman, 2006).

The imposition of custody time limits i.e. fixing an upper time limit on the period in custody before a defendant is brought to trial is also important. At the end of this time period the prosecution must bring the defendant to trial or forfeit the case. Introducing bail information schemes, whereby any independent agency (in the U.K. it is done by the Probation Service) could be charged with gathering knowledge regarding the ‘social facts’ of the accused so that the knowledge would benefit the court in its decision regarding the grant of bail (Morgan, 2000). Here, social facts refer to the characteristic ground realities such as poverty or the status of women, which surround and influence the life of the masses.

There is the gap in the communication between law making and the people. The gap is so large that the law finds it difficult to reach the common people. It is artfully used and abused only by the dominant few. Quite often the system is employed for functions, which are far from those originally intended (Deva, 2005). Lawyers, NGOs and social workers can contribute significantly in bringing the legislative organs close to the lost and the lowliest who form the major part of Indian population. They can help to make Indian juristic thought more real rather than formal, and democratic rather than autocratic. Section 437(1) of Cr.P.C., 1973 was never meant to grant bail to all the women accused of non-bailable offence. It only desires court to be liberal in the grant of bail to women and to make good and appropriate use of the section as far as possible.

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