

RECENT REFORM IN LAWS AND POLICIES RELATING TO PRISON CONDITIONS FOR WOMEN IN THE UNITED KINGDOM AND THE UNITED STATES: A COMPARISON

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Abstract

At present, there are ongoing reforms on the living conditions of female prisoners in both the United States and the United Kingdom. These reforms should ultimately comply with all standards and requirements under the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders or “the Bangkok Rules”. In this regard, there has been more progress in the United Kingdom than in the United States. Both the British Female Offender Strategy and the Women’s Policy Framework are in line with the content provided in the Bangkok Rules. While reform efforts in the United States, which are reflected through the judgment and FIRST STEP Act, are not in accordance with the Bangkok rules in many respects, such as the right of female prisoners to live with their child or the right to be monitored and searched by a female prison officer only. However, even though the United Kingdom has made progress in improving prison conditions for women through reform plans, there have been some practical problems encountered which may affect or prevent successful development of the living conditions of female prisoners.

Keywords: Prison Conditions, Female Offender, FIRST STEP Act, Bangkok Rules

1. INTRODUCTION

In the past, imprisonment was used as a method of punishment for offenders and to prevent them committing further offences. Terms of imprisonment were long and the poor conditions inside the prison were considered part of the punishment. Since then, criminal policy has changed. The enforcement of prison sentences is primarily aimed at correcting the behaviour of the

offender. The general acceptance that bad conditions inside a prison form part of the punishment itself is no longer justified especially when it concerns the imprisonment of female offenders who have special needs. However, it appears that many prisons around the world still treat female prisoners the way as their male counterparts, even though female prisoners have different needs from men. As a result, various problems exist for female prisoners such as violation of their

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human rights, health issues like pregnancy and childbirth in prisons, social stigma, and sexual abuse. The poor quality of prisons not only affects the prisoners themselves but also has a negative impact on the criminal justice system because it is unable to achieve the objective of prisoner rehabilitation.

This paper analyses prison conditions faced by female prisoners in the United States and the United Kingdom and the impact they have on human rights, social stigma, and the criminal justice systems in both countries. Also, the study looks at the efforts to reform the living conditions of female prisoners in the United States and the United Kingdom, and any differences when compared to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders or Bangkok rules. Lastly, although these reforms attempt to comply with the Bangkok rules, this study notes that there are some factors which may affect the success of the reforms.

2. BACKGROUND: INCARCERATION OF WOMEN AND POPULATION

According to the World Female Imprisonment List, the United States has 211, 270 female prisoners, accounting for 9.8% of the total number of prisoners. This is a ratio of 60.7 female prisoners per 100,000 population which is considered a very high number compared to other countries in the world and this proportion is likely to increase each year (Walmsley, 2019). Moving on to the United Kingdom: England and Wales has 3,974 female prisoners, accounting for 4.6% of the total number of prisoners (about 6.7 per 100,000 of the national population); Scotland has 360 female

prisoners, accounting for 4.9% of the total number of prisoners (about 6.6 per 100,000 of the national population): and Northern Ireland has 51 female prisoners, accounting for 3.6% of the total number of prisoners (about 2.7 per 100,000 of the national population) (Walmsley, 2019).

It is noteworthy that the United States has a higher proportion of those who are imprisoned than the United Kingdom. In addition to having a much larger population, the US criminal policy also plays a part in producing more female prisoners. According to data from the Equal Justice Initiative (2019), the number of females imprisoned between 1980 and 2016 has increased by 700% from 26,378 people in 1980 to 213,722 people in 2016. Most offences are drug related or minor such as violation of parole which lack probationary measures for offenders such as community punishment (Equal Justice Initiative, 2019; Seligson et al. 2003).

In 2005, 70% of women in state prisons suffered some form of mental health problem and 12% of those had a severe psychiatric disorder. In addition, women also had a higher HIV infection rate. Also considered to be troubling are the educational inequalities faced by incarcerated women. Before imprisonment, nearly half (44 percent) of female prisoners had not graduated high school. Women also face severe obstacles after being released from jail; especially once they have children. A number of these women find themselves as their child's primary care giver and seek to maintain themselves and their children without reoffending. (Leigh, 2021).

In the United Kingdom, although the number of prisoners is not as high as the United States, the number of female offenders

is increasing. According to a report of the All Party Parliamentary Group (APPG) on Women in the Penal System, an important reason for female imprisonment is the failure of the Transforming Rehabilitation project, which is an attempt by the British Ministry of Justice to reform the probation services (Howard League for Penal Reform, 2019). Also, according to a report of the British Parliament, it was found that probation services reform after the announcement of the Transforming Rehabilitation plan did not reduce the rate of reoffending (House of Commons Justice Committee, 2019). Due to this failure, magistrates lack confidence in probationary measures and assume that probation may not be able to rehabilitate an offender. As a result, they often incarcerate the offender, instead of using community sentencing (Irish Penal Reform Trust, 2019).

Eighty percent of women in jail are diagnosed with some form of mental illness, and one-third of female inmates have tried to commit suicide prior to incarceration. Self-harm while in custody has become commonplace, with 16 percent of females self-harming compared to 3% of men and accounting for 47 percent of all self-harm incidents in jail, despite just 5 percent of prisoners being female. Female inmates often have a higher suicide rate than men in prison. Before incarceration, at least one third of women are lone parents, and prison forces them away from their family, in which they play a crucial role. One in four women has experienced hard times as a child in county council care, half believe they have witnessed domestic violence, and a third claim they have suffered sexual harassment (Ginn, 2021).

In the United States, there has been an increasing rate of female imprisonment. However, the United Kingdom has seen a decreasing rate since 2005 (World Prison Brief, 2021). Nevertheless, a larger number of women have been exposed to the risk of imprisonment (Player, 2005). Therefore, it could be construed that the increase in female offenders' incarceration is the result of inefficiencies in the probationary measures and a lack of confidence in reformation penal policy.

3. RECENT REFORM IN PRISON CONDITIONS FOR WOMEN

Typically, women are imprisoned for narcotics crime or property offences and are less likely to commit serious crime. They are usually mothers who are poor, uneducated, lack skills and self-esteem, and are victims of domestic abuse (Bartol and Bartol, 2011). Therefore, the goal of treatment should be focused on increasing self-confidence, admitting their victimisation, taking care of their lives, and honing their life skills.

The issue of gender equality is important for the consideration and analysis of draft legislation as appropriate for dealing with female prisoners. According to the life span developmental theories, the development of heredity and environment in adulthood and characteristics are continuous. The development of life span does not end or become fixed when adulthood is reached but goes on until death (Broderick and Blewitt, 2020). For example, Erikson's Psychosocial Stages of Development proposes that humans develop throughout their life span and it specifies that each stage has its own

task to complete in order to enter the next stage. Unsuccessful resolution in a prior stage would negatively impact the development in the next stage of development (Broderick and Blewitt, 2020).

The development of life span also relates to gender differences. According to the Council of Europe (2021), gender needs inevitably affect the life span development of female prisoners throughout their life cycle. When compared to male inmates, women have specific health and hygiene needs such as reproductive and sexual health, mental health treatment for substance abuse, and counselling for victims of violence. Many female prisoners still have family responsibilities, especially commitments to their children. Having female prisoners far away from their families has a huge impact, and when female inmates leave prison, they often face problems of stigmatization and difficulties with reintegration which are much more severe than male prisoners. Prison staff also play a key role in supporting and rehabilitating female prisoners. Having regular female prison staff can build trust and encourage and motivate self-change. In addition to general female prisoners, there are also sensitive and vulnerable groups of female prisoners that should be given special treatment, such as transgenders, pregnant women, women with children, and girls (Council of Europe, 2021).

This article aims to compare laws and policies on different criminal justice territories in the areas of the treatment of female prisoners by comparing laws and policies at federal or central governmental level.

3.1 United States: Constitution rights and Legislative

Over the past 25 years, the number of women and girls caught in the criminal equity system has soared. Many have been incarcerated due to the War on Drugs and are subject to progressively reformatory sentencing policies for nonviolent offenders (American Civil Liberties Union, 2019). A significant number of these ladies are battling substance misuse, psychological maladjustment, and accounts of physical or sexual maltreatment.

There is an attempt to reform prison conditions for female prisoners by the interpretation of the constitution by judicial precedents and through the process of legislation, the FIRST STEP Act.

3.1.1 The United States Constitution

The United States is reputed to be the first country in the world to declare a written constitution and the rights of prisoners are also protected by the constitution. However, the rights of prisoners under the constitution protect both male and female prisoners equally. Since the United States consists of 50 states, the laws of each state depend on that state's parliament determination, which may define differently in details. Therefore, in this paper, we will focus on federal legislation, constitutional provisions, judicial decisions, and federal law.

In the United States Constitution, there are three rights related to women prisoners: the right to health, the

right to abortion in prison, and the right to be supervised and searched by female prison officers.

3.1.1.1 Right to health

The health rights are protected by the Eighth Amendment, which prohibits cruel and unusual punishment (Cornell Law School, 2019b). If the detainee has serious medical needs, prison officials must not show “deliberate indifference” to that need (Miller, 2019). This sentence is caused by an interpretation of the Supreme Court, which has extended the rules from the Eighth Amendment Constitution, which stipulates that only cruel and unusual punishment is prohibited. The court interpreted that cruel and unusual punishment includes the failure to provide medical services to prisoners.

The Supreme Court interpreted the case of *Estelle v. Gamble* (1976) that prison officials must provide medical needs with a high degree of seriousness to prisoners. However, the court stipulates that the prisoner must request to the officer because the officer could not know the needs of female prisoners (*Estelle v. Gamble*, 1976). If the officer is deliberately indifferent to the requirement, it will be the responsibility of the officer.

In the following case, *Todaro v. Ward* (1977) the rules were extended to show that the failure to provide a medical check or services shall be considered as a deliberate indifference. In this case, a female prisoner at Bedford Hills Correctional Facility in New York filed a case against the prison for being violated by inadequate medical care at the prison (*Todaro v. Ward*, 1977).

As for the final case, *Brown v. Beck* (1980), the court ruled that the medical services to be given to prisoners must be reasonable, but not necessarily the best quality (*Brown v. Beck*, 1980).

In all three cases, the Supreme Court of the United States provided a broader interpretation of the Eighth Amendment. Considering all cases, even though in the second case [*Todaro v. Ward*] the female prisoner is the plaintiff, all rules apply equally to both male and female prisoners. At present, there is no specific sentence for the protection of the living conditions of female prisoners.

In the case of women prisoners who are pregnant in prison, it remains to be argued whether a pregnancy is considered a serious medical need. In the first case, *Coleman v. Rahija* (1997), pregnancy is a serious medical need when the doctor has examined and found the pregnancy has clearly serious health issues (*Coleman v. Rahija*, 1997). While in another case, *Monmouth County Correctional Institution Inmates v. Lanzaro* (1987), the court found that as pregnancy conditions are different from other medical problems, pregnancy has the characteristics of serious medical needs (*Monmouth County Correctional Institution Inmates v. Lanzaro*, 1987).

However, regardless of whether the court interpreted that pregnancy is considered a serious medical need or not, the prison authorities are obliged to aid and respond to the request of the prisoner and if the officer violates this, it will be a deliberate indifference which is contrary to the Eighth Amendment.

Moreover, in *Women Prisoners of the District Court of Corrections v. District of Columbia (1994)* a ban was imposed on pregnant women prisoner restraints. *Nelson v. Correction Medical Services (2009)* set an additional exception to the previous precedent. Shackling pregnant prisoners with handcuffs are permitted in case of having a history or tendency to escape or assault. (*Nelson v. Correction Medical Services, 2009*) (Alexander, 2010).

3.1.1.2 Abortion rights

The right of female prisoners to abortion is a right that has been recognised in many criminal justice systems around the world, but the Bangkok Rules do not mention these rights.

Women's right to abortion is protected by the Fourteenth Amendment (Cornell Law School, 2019a; Kasdan, 2019) which defines the right to privacy of citizens and women's right to abortion and was finally accepted by the supreme court in *Roe v. Wade (1973)*. However, in *Planned Parenthood of Southeastern Pa. v. Casey (1992)*, the supreme court imposed certain exceptions to restrict the access to abortion in order to promote childbirth. Yet the imposed restriction must not cause an improper burden to prisoners who decide to terminate a pregnancy. The improper burdens are as follows - the need to request parental consent and the waiting period for abortion. This precedent is also applicable to women in prison (*Southeastern Pa. v. Casey, 1992*) (Roth, 2004).

The right to abortion is considered a right to health as well because it is related to pregnancy (McCarthy, 2021) and the Eighth amendment guarantees that the authorities have the duty to provide medical assistance toward pregnant women prisoners in order to terminate a pregnancy. Therefore, it may be seen that women are entitled to choose to exercise their rights under the Fourteenth Amendment or the Eighth Amendment to achieve their abortion objectives.

3.1.1.3 Right to be supervised and searched by female prison officers.

Considering the Fourth amendment (Cornell Law School, 2019c) on the right to privacy from unreasonable searches and the eighth amendment regarding cruel and unusual punishment, female prisoners should not be subjected to a physical search by male prison officials. Notwithstanding, the United States Supreme Court has put this issue on *Johnson v. Phelan (1995)* that prohibits employment discrimination on the basis of gender (Kapczynski, 2019), which may result in this right not being developed as expected (*Johnson v. Phelan, 1995*).

3.1.2 FIRST STEP Act

The "Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act" or FIRST STEP Act is a major reform of the criminal justice system in the United States which occurred when President Donald Trump

signed this Act on December 21, 2018, amending the United States Code (Congress.gov, 2019). This law adopted legal principles from previous judicial precedent, namely, *Nelson v. Correction medical services* (2009).

On the issues relating to the living conditions of female prisoners, this law prohibits the use of restraints on female prisoners during pregnancy, starting from the first day that pregnancy is confirmed by a medical professional until the end of postpartum period.

There are only two exceptions. First, when it appears that pregnant women prisoners tend to escape and cannot be prevented by other means. In other cases, female prisoners are more likely to cause harm to themselves or others and cannot be prevented by other means. Second, if the medical expert considers that the use of restraints is appropriate for the medical safety of prisoners.

In addition, the law also requires that the place of detention of prisoners must be as close to the residence of the prisoners' family as possible by requiring that distance from a prisoner's residence to a prison shall not exceed 500 miles so that the prisoner's family can travel to visit the prisoner.

This latest law of the United States protects the rights of pregnant women, but there are many rights in related areas that have not yet been established in the US legal system and are still in the form of a precedent judgment that must be interpreted for clarification in the future.

3.2 United Kingdom: Female Offender Strategy and Women's Policy Framework

The United Kingdom was the very first country in the world to initiate criminal justice reform. In the past, England had a brutal criminal justice system with the use of capital punishment and physical punishment. Later, there was a change in the purpose of the imprisonment from retribution and deterrence to the rehabilitation of offenders (National Archives, 2019).

In 1817, Elizabeth Fry, an English prison reformer, along with 12 other women initiated the Association for the Improvement of Female Prisoners and lobbied government officials, including Parliament, to inspect prison's conditions. In 1823, prison reform legislation was finally proposed (Elizabeth Fry Charity, 2021). However, there were no more specific measures for female prisoners until 21st century, when reform of the female prisoners' living conditions began again after a long period of time.

In 2008, Prison Service Order no. 4800 was issued. This prison service order was enacted for Her Majesty's Prison and Probation Service (Ministry of Justice, 2019d). The purpose of the Prison Service Order No. 4800 is to eliminate unlawful discrimination and harassment and to promote equal opportunity between men and women (Ministry of Justice, 2019c).

3.2.1 Reformation under the Transformations Rehabilitation

In an attempt to reform the criminal justice system in 2016, the British Ministry of Justice published a

white paper on Prison Safety and Reform. The document stipulates that the government will issue strategies to improve safety and reform for female offenders both in prison and in the community by 2017 (Ministry of Justice, 2019b). However, the Ministry of Justice has postponed the issuance of such document to June 2018. The name of the document is the Female Offender Strategy. The strategy focuses on reforming the criminal justice system in relation to female offenders in many ways. One of them is to improve the well-being of female prisoners in prisons (Ministry of Justice, 2019a).

There are two important reasons that the reform of the female prisoners' conditions has been delayed. The first is the failure of Transformations Rehabilitation. As noted previously in the article, this failure led to a loss of public confidence in the criminal justice system as a whole. Furthermore, the original purpose of the Transformations Rehabilitation was to focus on distributing state probation work to the private sector to act instead with the hope of reducing recidivism. Unfortunately, the recidivism rate actually increased and therefore the goals of the Transformations Rehabilitation which were set out at the beginning were not achieved (National Audit Office, 2019).

As stated in the Bromley Briefings Prison Factfile report as of Autumn 2018 (Prison Reform Trust, 2019), a total of 1,762 female offenders which were under surveillance were eventually returned to prison and this failure has caused instability in the criminal justice system.

Another cause affecting the reforms was a lack of political stability in the United Kingdom due to the referendum to withdraw from the European Union (commonly known as Brexit) and the general election in 2016. Both events occurred during the drafting of the reform strategy. There were also three different Secretary of State for Justice appointed during this period (GOV.UK, 2019)², resulting in a lack of continuity in public policy related to the reforms. Effective reforms can only occur under a stable government. If the senior management who initiated the reform policy was suddenly changed, there would be little possibility that the next person taking the position would continue the exact same policy. However, despite all this, the Female Offender Strategy was finally announced in 2018 and in December 2018, the Women's Policy Framework was announced that replaces the Prison Service Order number 4800 (GOV.UK, 2019).³ This framework will result in improving the quality of life and

² 1. The Rt Hon Elizabeth Truss MP (2016 to 2017)

2. The Rt Hon David Lidington CBE MP (2017 to 2018)

3. The Rt Hon David Gauke MP (2018 to Present)

³ Key topics of Women's Policy Framework describe as follows;

1. Requirements

- Cross-cutting
- Human trafficking and Modern-day slavery
- Female Genital Mutilation (FGM)
- Court
- The Offender Rehabilitation Act 2014
- Community
- The Homelessness Reduction Act 2017

treatment of female prisoners and the criminal justice system.

3.2.2 Guidance on Working with Women in Custody and the Community and Gender Specific Standards to Improve Health and Wellbeing for Women in Prison in England

As of today, the Female Offender Strategy and the Women's Policy Framework are essential regulations that endorse and recognise the rights of female prisoners in the United Kingdom. The Women's Policy Framework is made in compliance with the Bangkok Rules.⁴

The Women's Policy Framework Article 6.3 has set out more detailed information in the 'Guidance on Working with Women in Custody and the Community'⁵, which outlines how Her Majesty's Prison and Probation staff should work with women. Also, the Framework needs to be read in conjunction with 'Gender Specific Standards to Improve Health and Wellbeing for Women in Prison in England'⁶. The rights considered in this article are as follows.

3.2.2.1 Right to Health

The Gender Specific Standards to Improve Health and Wellbeing for Women in Prison in England, issued by the Department of Health and Social Care, set out the rules for commissioners of services, service providers, and all employees who work in the female prison estate.

The Standards cover 10 areas of health and wellbeing issues, namely: general, health and wellbeing; mental health; self-harm and suicide; substance misuse; violence and abuse; sexual and reproductive health; pregnancy and families; older women; nutrition and diet; physical activity; and weight management.

The 6 overarching principles of the Standards are important to improve the health and wellbeing of female prisoners. The principles are as follows (Public Health England, 2021).

1. The whole prison environment should be focused on promoting the mental and physical health and wellbeing of all women in prison.

-
- Custody
 - Family
 - 2. Constraints
 - Prisoner Escort and Custody Services (PECS)
 - Searching
 - Detention of Immigration Detainees – Pregnant Women and Mothers with Babies

⁴ The Women's Policy Framework Article 6.1 "Government policy is made in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules')."

⁵ Women's Policy Framework Article 6.3 "More detailed information and guidance is set out in the document Guidance on Working with Women in Custody and the Community. This guidance is available internally for HMPPS staff. This guidance outlines how practitioners working with women can deliver services to them in a way that meets their distinct needs and reflects the significance of gender to their offending behaviour."

⁶ Women's Policy Framework Article 3.13 "In accordance with Public Health England's Gender Specific Standards to Improve Health and Wellbeing for Women in Prison in England, women are able to access health services, including mental health, personality disorder, substance misuse and learning disability services that meet their gender specific needs."

2. The prison environment for women needs to be trauma informed.

3. User involvement should be integrated into the development and delivery of health and wellbeing programmes within the prison.

4. All women in prison should have access to purposeful activities and time out of the cell.

5. A structured programme of peer support should be available to all women.

6. Prepare for and ensure continuity of care for women on release into the community.

3.2.2.2 Right to Abortion

In England, Scotland and Wales, abortions were criminalised before the 1967 Abortion Act was enacted. While in Northern Ireland, abortions were radically decriminalised by the Northern Ireland (Executive Formation etc) Act 2019. Women can have abortion in the first 24 weeks of pregnancy by approval of two doctors on the condition that the baby is likely to pose a greater risk to the physical or mental health of the mother than a termination. (BBC, 2021)

The Department of Health and Social Care presented the Gender Specific Standards to Improve Health and Wellbeing for Women in Prison in England, designating to complement existing national and international regulations for women in prison.

Under Standard 6.3 it is stated that Pregnant women in prison should be supported to access abortion services and receive appropriate after care. This includes being provided information and support with decision making and counselling afterwards, transportation, arranging appointments, other logistical assistance, and appropriate support from a family member at the appointment (Public Health England, 2021).

The Guidance on Working with Women in Custody and the Community, in compliance with the Standards, also suggest that, (Birth Companions, 2021)

1. Female prisoners who are considering terminating a pregnancy should have access to abortion care in accordance with the services provided to women in the community, including guidance and assistance with making decisions and counselling afterwards.

2. Women who elect to terminate a pregnancy should obtain sufficient care from professional personnel and have the option of seeking assistance from a member of the family or a friend on appointment.

3. For physical and emotional problems, women should be closely monitored following termination, with a treatment plan being put in place, as should be the case with all patients who have had post-operative / post-invasive interventions. Women who have had a termination or loss of pregnancy in the last 12 months should also be held for at least one month on the perinatal pathway to ensure that any recurrent problems can be resolved.

3.2.2.3 Right to be supervised and searched by female officers.

Women's Policy Framework related to searching, Article 5.3, 5.4 concludes that, as a matter of routine, woman prisoners must not be thoroughly searched, but only on intelligence or rational suspicion that an object is hidden on the person that can be disclosed by a complete search. The method for searching for female prisoners is different from the procedure used for searching for male prisoners. Women who are or may be pregnant will not be exposed to the process of x-ray body scanning.

In PSI 07/2016 (National Security Framework 3.1 SEARCHING OF THE PERSON) describes the additional search arrangements for women inmates. It is comprised of two levels: Level 1 includes removing the clothing of the woman besides her underwear; Level 2 involves removing all the clothing of the woman, including her underwear (NB. the woman must never be fully naked during the search). Level 2 of the search must be applied only when there is information or suspicion that the woman has hidden an object in her underwear or if during Level 1 of the search illicit things have been found. Plus, full search or strip searches of women in this arrangement must only be carried out by two female officers and must be out of sight of others. The first officer is responsible for search supervision. Generally, she would examine the subject from the front. Taking into account any cultural or religious concern, she must clarify the need for the search and each step. The second officer is responsible for collecting and

searching for clothing as well as other things from the subject. At the instruction of first officer, she must return the clothing and other objects to the subject again, observe the inmate, generally from the back or side, during the search, keep attentive to possible threats and stay alert during the search (Her Majesty's Prison and Probation Service, 2021).

3.3 The Bangkok Rules

At the international level, there had not been an international standard that sets the rules for improving the living conditions of female prisoners until 2010. Her Royal Highness Princess Bajrakitiyabha of Thailand initiated a project to assist female prisoners and propose an international set of rules to improve the living conditions of women in prison, which was later adopted by the United Nations as the United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders, otherwise known as the Bangkok Rules (UNODC, 2019).

The Bangkok Rules consist of 70 rules, emphasizing the use of other punishment instead of imprisonment for female prisoners and requiring humane treatment of female prisoners. If imprisonment was imposed on a female offender, she has the rights as follows (Penal Reform International, 2019).

3.3.1 The right to proper health care

The Member States shall provide appropriate medical services for female prisoners which include mental health treatment, drug addiction

treatment and other transmissible diseases treatment, and female prisoners have access to preventive treatment, such as breast cancer examination.⁷ Although the Bangkok Rules do not mention the right to abortion of female prisoners, the rules do protect women in prison who have undergone abortions to receive the appropriate medical responses without delay.

3.3.2 Humane treatment of women

The Bangkok Rules require that officials must treat women with dignity by not using restraints to control women during labour, pregnancy, or after birth and there should be no punishment using solitary confinement or disciplinary segregation for pregnant women prisoners or prisoners who have children who need breastfeeding.⁸

3.3.3 Search for women with respect

Effective approaches shall be taken to ensure that the dignity and respect of women prisoners are secured during private searches, which shall be carried out only by women staff who have been adequately trained in the required search techniques and in compliance with the guidelines prescribed. In order to prevent the negative mental and potential physical effects of invasive body searches,

alternative screening approaches, such as scans, should be created to replace strip searches and invasive body searches. Prison staff shall show competence, professionalism, and sensitivity, and shall maintain respect and dignity while searching both children in prison and children visiting prisoners.⁹

3.3.4 Granting rights to the children of the prisoners

The prison shall give the rights to the children of the female prisoners to spend time with their mothers because the children of the prisoners are not the offenders, so they must not be treated the same.¹⁰

3.3.5 Treatment of Pregnant women, breastfeeding mothers and mothers with children in prison

The Bangkok Rules suggest that confinement shall not be enforced for either a pregnant woman or a breastfeeding woman or a woman with a child.¹¹

Pregnant and breastfeeding women should obtain advice, adequate food, a safe environment, and regular workout opportunities from a trained health practitioner. Where necessary and acceptable, non-custodial measures for pregnant women or women with dependent children are preferred. Also, pregnant

⁷ Bangkok Rules, Rule 5, 6-9, 10-11, 13, 15, 17

⁸ Bangkok Rules, Rule 2, 3(1), 4, 5, 9, 18, 22, 28, 47-52, 64

⁹ Bangkok Rules, Rule 19-21

¹⁰ Bangkok Rules, Rule 26-28

¹¹ Bangkok Rules, Rule 22

adolescents should receive the same treatment and assistance as pregnant adult inmates.¹²

The prison system shall be adequately flexible to accommodate the needs of pregnant women, nursing mothers, and women with children, but also to enable women prisoners to have access to extensive activities and support programmes.¹³

3.3.6 Allocation

Women in prison shall, to the extent feasible, be assigned to prisons close to their home or place of social rehabilitation, taking into account their roles as mothers, the request of individual women and the availability of suitable programs and services. The interaction of women inmates with their families, including their children, and guardians and legal representatives of their children shall be encouraged and facilitated by all appropriate means. Measures are needed, where possible, to counterbalance the limitations faced by women detained in institutions far away from their homes.¹⁴

4. A COMPARISON BETWEEN THE UNITED STATES AND THE UNITED KINGDOM

4.1 The United States

Considering the rights of female prisoners that are related to the constitution, precedent judgment, or provisions of law,

there are some characteristics that correspond to the Bangkok Rules, which can be seen to provide protection in terms of rights to medical services, protection of the rights of pregnant women and the humane treatment of women, such as, the use of restraints on pregnant women before childbirth and postpartum, albeit there are issues to be considered.

An important aspect of protecting the rights of prisoners in the United States is that the law aims to protect all prisoners equally, whether male or female. It is observed that equality is an important principle of the United States Constitution and is the concept behind law enforcement or legal interpretation. Individuals are treated equally before the law. Therefore, there are only a few laws that protect the rights of female prisoners in prison. This is contrary to the basic principles of women's rights in prisons, which have special characteristics that are different from other types of prisoners and must be treated in a special way because of such physical characteristics. Therefore, as a result of this concept, the protection of the rights of female prisoners in the United States is not as advanced as the Bangkok Rules or the British law.

In addition to this, the rights of female prisoners to live and spend time with their children are not protected by the laws of the United States, while the Bangkok Rules and the British reform plan have made significant progress in this area. The laws of the United States, especially the reforms that took place in 2018 by the FIRST STEP Act, do not mention the rights of female prisoners to take care of their children.

¹² Bangkok Rules, Rule 48, 64, 65

¹³ Bangkok Rules, Rule 42

¹⁴ Bangkok Rules, Rule 4, 26

However, there is the similar right to be in a prison near the residence of a prisoner family within 500 miles. This right applies to both female and male prisoners and the law in this matter has not progressed as expected.

Finally, in monitoring and searching for illegal things on a female prisoner's body by a female guard. Despite the judgment of the United States Supreme Court, *Jordan v. Gardner (1993)* which ruled that a search by stripping all clothes is illegal and contrary to the constitution, the monitoring of prisoners in other ways is still protected by law, including being searched by male guards. Presently, there are no court precedents stipulating that it is against the Constitution (*Jordan v. Gardner, 1993*).

As already mentioned above, according to *Johnson v. Phelan (1995)*, the court's decision still protects the right to not discriminate against the performance of prison staff. Preventing male guards from working in a female prison is likely to be considered as discrimination and not regarded as Bona fide occupational qualification. The government agencies could not order prison staff not to search female prisoners only because that person was a male. Lack of protection in the United States has a serious impact, in addition to being against the Bangkok rules, it allows male officials to monitor and search female prisoners causing them shame and mental trauma.

4.2 The United Kingdom

When considering the reform plan of the United Kingdom, it was found that the Prison Service Order No. 4800,

the female offender strategy, and the women's policy framework were in accordance with the United Kingdom's commitment to follow and improve regulations following the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders or the Bangkok rules.

Still, there are factors that may be regarded as obstacles that make reform unsuccessful, namely financial support. In implementing the policy of the female offender strategy, which is the master plan of all actions, the government has set a budget to implement the reform plan of 5 million pounds, down from the original budget set at 30 million pounds (Syal, 2019) (*Hansard*, 30 January 2019 col 1165-66). Financial barriers might be an important factor that causes prison operators to not be able to implement the plan and may result in increasing closure of prisons which will worsen the problem even further.

Another consideration is that even though the Female Offender Strategy has set measures to improve the living conditions of female prisoners in many respects, in practice the Government tends to focus more on building prisons rather than seriously improving the lives of female prisoners (Dearden, 2018). The idea of building more prisons without paying attention to improving living conditions is not sustainable (Eason, 2010). An increase in the number of prisons cannot solve the root cause of the problem because, in the end, it would be contrary to the purpose of imprisonment that aims to reform the behaviour of female prisoners to be able to return to society and not re-offend.

Restorative justice is the concept behind the current criminal justice system in the United Kingdom (GOV.UK, 2019). Imprisonment should not be prioritised as a sole method to tackle reoffending. However, presently, the government's perspective and public opinions regard imprisonment as the best way to prevent crime (Hough, 2019) (Wood & Wiki, 2019), and this may result in the living conditions of female prisoners remaining unchanged or worse because poor living conditions in prisons used to be part of the deterrence criminal policy.

5. CONCLUSION

In summary, where the rights of women in prison are concerned, laws and policies in the United States and the United Kingdom have been defined differently when considering the right to health, abortion rights, and the right to be supervised and searched by female prisoners. The United Kingdom's laws and regulations regarding the rights of women in prison are the Female Offender Strategy, the Women's Policy Framework, the Guidance on Working with Women in Custody, and the Community and Gender Specific Standards to Improve Health and Wellbeing for Women in Prison in England. The British laws and policies on the right to health, abortion rights, and the right to be supervised and searched by female prisoners are more detailed than those of the United States'. They clearly show their commitment to comply with the Bangkok Rules.

In contrast, although the United States has the Supreme Court's precedents with interpretation of the United States Constitution and its Amendments, and the FIRST

Step Act, it has fewer rights and protections for women prisoners on the right to health, abortion rights, and the right to be supervised and searched by female prison staff.

When comparing the ongoing reforms in the living conditions of female prisoners in the United States and the United Kingdom, to the Bangkok Rules, it can be seen that the laws of the United Kingdom are more progressive than those of the United States. Both the Female Offender Strategy and the Women's Policy Framework are in line with the content provided in the Bangkok Rules. On the other hand, the reform efforts in the United States, which are reflected through the judgment and FIRST STEP Act, are not in compliance with the Bangkok rules in many respects, such as the right of female prisoners to live with their child and the right to be monitored and searched by a female prison officer or staff. Plus, the constitution and precedent judgments set the principles for treating female and male prisoners equally which is a barrier to the development of the living conditions of female prisoners.

Even though the United Kingdom has made progress in reforming the prison conditions of women through reform plans there have also been practical problems, such as significant government budget cuts for prisons which may affect the improvement of living conditions and the government's focus on building new prisons rather than improving conditions for female prisoners in existing prisons. Finally, the Transforming Rehabilitation plan has been a failure and has resulted in a loss of public confidence in the criminal justice system.

The United Kingdom does have a clear reform plan that is in line with the Bangkok rules, but unfortunately, either of the aforementioned factors could derail this

reform and delay further progress to the improvement of living conditions for female prisoners just as in the United States.

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