

## Chapter 63

# Can Therapeutic Jurisprudence Improve the Rights of Female Prisoners?

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### ABSTRACT

*Women offenders may suffer from numerous violations of basic rights within the prison system. They are vulnerable for sexual assaults including rape, molestation and sexual bullies. They may also lack basic medical and hygienic amenities. While international conventions and rules like United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules, 2010) offers guidelines for protection of the rights of women prisoners, still there has been no research which explores the therapeutic jurisprudential values of such rules. This chapter suggests that the therapeutic jurisprudential approach of the domestic and international laws, conventions and guidelines must be understood by the practitioners, activists and other stakeholders who may in turn; make use of the therapeutic jurisprudential values to improve the condition of women prisoners.*

### INTRODUCTION

Little is known about the potential of therapeutic jurisprudence (TJ) for improving the rights of female prisoners. Halder and Jaishankar (2017-forthcoming) explained that whilst there has been a multi-dimensional growth of TJ, this must be addressed from the perspective of women's rights. Women's rights activists claim that female prisoners have few rights and these are difficult to access (Kilroy & Pate, 2010). The position of activists and those who represent the interests of female prisoners is complex and contradictory; however, there is a consensus that female prisoners need to be empowered

Initially, TJ presented a new look at mental health law and did not use a rights-based approach (Wexler, 2013, 1999). Since the 1990's TJ has influenced work in specialist contexts such as problem-solving courts. The premise of TJ is that the law influences emotional life and psychological well-being (Winick & Wexler, 2003). With this approach, legal values and due process are not undermined but used so that

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the therapeutic effect of legislation is maximised and the anti-therapeutic effect is minimised (Spencer, 2014). Scholars using the TJ approach have been critical of the criminal process (Gal & Wexler, 2015) and considered the work of practitioners in prisons (Birgden, 2015). Significantly, David Wexler has developed a metaphor and methodology, which is designed to support practitioners and scholars with exploring the potential of TJ and this, is promoted through a blog called Mainstreaming Therapeutic Jurisprudence.

The importance of this chapter is its consideration of international non-state legislation which has been designed to improve conditions of women in prison. Prisons provide a textbook example of anti-therapeutic conditions (Perlin, 2014). Implicitly anti-therapeutic conditions have been recognised within the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules, 2010). The Bangkok Rules are unique because they protect the rights of women and are the first international instrument devoted to addressing the needs of children in prison with their parent. These rules are significant with their recognition that women in prison are at high risk of rape, sexual assault and humiliation in prison (Penal Reform International, 2013). They further international human rights for female offenders and provide a framework for ensuring that practitioners, stakeholders and activists recognise the rights of female prisoners. Whilst TJ scholars have mentioned forms of international non-state legislation in their studies or frameworks (Perlin, 2015; Birgden & Perlin, 2008), this type of law has not been the main focus of any previous studies using a TJ approach.

This chapter will be applicable for activists, practitioners and stakeholders who want to understand the potential of therapeutic jurisprudence for improving the rights of female prisoners. The three objectives for this chapter are:

1. To identify the potential of therapeutic jurisprudence for activists, practitioners and stakeholders.
2. To understand the extent international non-state legislation can meet the goals of therapeutic jurisprudence.
3. To suggest ways that therapeutic jurisprudence can be used to improve the rights of female prisoners.

## **BACKGROUND**

Violence within prisons has many forms and can lead to the death of prisoners. In the ten years between 2004 and 2014 2,110 men, women and children died in detention around the world and out of these there were 704 self-inflicted deaths, 18 homicides and 2 deaths caused from restraint (Coles, 2014). Prisoners can experience visible physical violence to subtle acts of emotional, psychological and personalised harm. All prisoners have rights; however, these can be interpreted in many ways and even re-defined as privileges (Scruton & Malloch, 2009). If rights were respected for prisoners, then it is possible that a message would be conveyed to everyone that regardless of circumstance, race, gender, religion or social status people could be treated with dignity and respect (Zinger, 2006).

All prisoners have enforceable human rights, which protect them against cruel, inhuman or degrading treatment or punishment. The Universal Declaration of Human Rights (1948), and the Vienna Declaration and Program of Action (1993), states that the foundation of freedom, justice and peace means recognising the inherent dignity and inalienable rights of all individuals (Birgden & Perlin, 2009). International human rights for all prisoners are safeguarded through covenants such as the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1987) which gives freedom from torture

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