

Women Prisoners in India: A Human Right Approach

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CERTIFICATE

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DECLARATION

I, Ricky Ghosh, do hereby declare that the dissertation titled “**Women Prisoners in India: A Human Rights Approach**” submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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List of cases

Sheela Barse v. state of Maharashtra

State of Maharashtra v. C.C.W. Council of India

Paramvir Singh Saini v. Baljit Singh &Ors

DK Basu v. the state of West Bengal

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The Prison Act 1984
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The Prison Manual 2016

International Instruments

UN Standard Minimum Rules for the treatment of prisoners 1955
The Standard Minimum Rules for the treatment of prisoners and the United Nations standards Minimum Rules for Non-custodial Measures 1990
The United Nation Standard Minimum Rules for the Administrative of Juvenile Justice 1985
Body of principle for the protection of all people under any form of detention or imprisonment 1988
United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders 2010
UN Principles and Guidelines on access to legal aid in criminal justice system 2012

Table of Abbreviation

ANM	Auxiliary Nurse And Midwife
BPR&D	Bureau Of Police Research And Development
CR.P.C	Code Of Criminal Procedure
CSR	Corporate Social Responsibility
CEDAW	Convention On The Elimination Of All Form Of Discrimination Against Women
NCRB	National Crime Records Bureau
NGO	Non Governmental Organisation
NARC	Non Average Rate Contact
NMPM	National Model Prisoner Manual
NHRC	National Human Rights Commission
SMR	Standard Minimum Rule
UT	Union Territory
UP	Uttar Pradesh
UN	United Nation
WHO	World Health Organisation

Chapter 1

Introduction

1.1 Introduction

We live in a patriarchy society of mankind where more facilities and advantages are provided to men in compare to the women. Women privileges are always less accepted by the society and for that matter women has always been subjected to discrimination and disadvantages, such disadvantages has also seen in prisons where women has been convicted for crimes and since women education are still not considered to be a basic needs for the women in most part of the country as a result they are not aware of their legal rights and remedy which makes them more disadvantage one and as a result they undergo through many economic crisis which make them unaware to hire a lawyer. Most of the women who are subject to petty offences and belonging from marginalized societies where education and going to school is not a common norm for them and due to imposition of role model factor to be or behave in a particular way like any other stereotypical society has made them more unaware of the surrounding and legal remedies and mostly for that matter women who are detained are mostly illiterate. Consequence of this, the females are behind the bars not because of paucity of money and capital to engage an advocate, but they are largely not knowing their rights under the current legal regime in India. It affects them very harshly and puts under them a very weak position, as they are being threatened to approve statements and are bereft of technicalities of the law. So, women undergo through a lot of difficulties one of such includes sexual abuse, where for some section of women it becomes difficult to deal with men in large population, as in compare to female detainee the ratio of mate detainee is comparatively more. For a non-resident also it amounts to difficulties since they are not aware of the national language and not aware of the legal availabilities amounts to more vulnerability and hence amount to sexually abuses. Although there are many international and national laws in India pertaining to women prisoner which specifically work for the women prisoner, the Bangkok rules is one of the instruments which specifically work for the women prisoner which was adopted in the

year 21 December 2010.¹The Bangkok rules compliment and supplement all the prior rules which are relevant for female prisoners. Also, in 2015 the UN General Assembly has adopted Nelson Mandela rule regarding international minimum standard rule for the treatment of prisoners which includes women as well.²The prisoner Act 1894³in India is one of the oldest pieces of legislation which administer the prisoner system in India. On the other hand, the constitution of India⁴ provides equal rights and opportunity to its citizen in India irrespective of its sex, religion, caste, race etc. Despite of such legislation pertaining to prisoner, the scenario relating to prisoner is a matter of concern and the situation of women prisoners are more bothersome in nature. According to the National Crime Records Bureau (NCRB), the number of female prisoners in India by the end of 2021 was 22,918, but the capacity of the country's 32 existing women jails was just 6,767. Among the 22,918 female detainees, 1,650 had children with them on the prison grounds. Out of 22,918 female convicts, 1,418 were under-trial prisoners with 1601 children, and 216 were convicted prisoners with 246 children.⁵There is tremendous number of issues faced by women prisoners which are important to address and that include medical aid, sanitary issues, safety and security. Coming into safety and security there are no transgender prisons in the country India. There is not sufficient amount of space for their survival which also amount to inhumane conditions. Women are also often become the victim of sexual violence and offences by the authorities who are in charge and by the other inmates, also there is a requirement for improving the living condition of women by providing a good number of toilets, bedding, lightening system.

¹UNODC, Handbook on women and imprisonment (2nd Ed, Criminal justice handbook series United Nations 2014) <https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf> accessed 15 April 2023

²UN Social & Economic Council adopted the revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)'(UNODC, 2015)<<https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/>> accessed 15 April 2023

³ The Prisons Act 1894

⁴ The Constitution of India 1950

⁵Shivankar Joshi, 'State of women prisons in India: Inadequate space or absolute lack of it' *The Statesman*(New Delhi, 21 September 2022) <<https://www.thestatesman.com/india/state-of-women-prisons-in-india-inadequate-space-or-absolute-lack-of-it-1503113495.html>> accessed 15 April 2023

Though there are so many measures to protect the vulnerable women that protect women in jail but the problem is, the enforcement of such protection measures has been shown to be mostly poor, and women confront a number of issues while detained. Living conditions of women prisoner and their rights is a quite untouched topic and a detailed analysis is required to examined if they are being provided the basic facilities of mankind

1.2 Statement of problem:

There are numerous national laws and international rules and guidelines that talk about women's safety and security in prisons, but there are still many instances where it has been seen that women are still suffering the main problem which remain is with regard to the enforcement of such laws. Despite the fact that men and women are supposed to be treated equally in our society, women continue to be the victims in every aspect of life, including those who are imprisoned. Women inmates faced issues relating to lack of sanitary pads during the menstrual periods and also most of them are unaware of their legal rights and remedy, According to Prison Manual Act there should be separate institution between men and women and despite that most of them are in direct contact of male inmates. The ground reality is different than what actually we see and the reason behind such acts could be the poor criminal justice system and the sense of ignorance that prevails in the society for women in general. There are lots of Human Rights instruments also talks about women rights for example CEDAW which talks about the principle of non- discrimination. This research is going too emphasized upon the laws that governed the women prisoners and the issues faced by them and the kind of judicial approach working for the women prisoners.

1.3 Literature Review:

A review of the literature has improved the researcher's understanding of the study problem. The researcher has looked through a number of various types of literature, including books, journals, news stories, and periodicals. The researcher might attempt to do research by using the literature review.

Handbook on Women and Imprisonment by Tomris Atabay,⁶

It looks upon the various problems but particularly discuss about the problems confronted by the women under the current legal regime of criminal law, which necessitated serious attention and special measures to provide basis constitutional guarantee of legal aid to women in India also sheds light on how to attach a gender lens under current polices that dealt with legal aid. This book contextualized various instruments both national and international, such as the UN Standard Minimum Rules and the Bangkok Rules, which provides a special emphasis on women in general. It also emphasizes the vulnerability of this segment of society and how easily they are being targeted or subjected to cruelty assault, harassment, rape, and abuse, as well as some logical reasons why women should be segregated from their male counterparts provided some remedial measures to be taken into account for safety and security of the well being of women prisoners. This book has also provided and suggested some remedial measures for the working of the women prisoners

According to this article **“Women Criminals: Case Study from India”** by **Anupama Kaushik⁷** feminists hold the opinion that all traditional theories of criminality were based on men's experiences since men had traditionally controlled the field of criminology. According to feminist theory, women in patriarchal societies are subjected to sex-based subordination, which promotes criminal behaviour. They contend that the patriarchy must cease or that at the very least, major adjustments must be made to societal structures and institutions that are based on gender. Reduce gender-based gaps and inequalities in society, particularly in the legal system, would be the aim. This justification appears to fit India the best, where a high percentage of women are detained and found guilty of murder and dowry-related crimes. But the majority are first-time offenders. At first glance, it appears that women are killing other women for money, but the dowry system is inherently patriarchal, showing that men are superior to women and that relatives on the groom's side have more status than those on the brides. As a result, the bride can be mistreated, hurt, or

⁶UNODC (n 1)

⁷AnupamaKaushik, ‘Women Criminals: Case Study From India’ (2017) 1(2) Multidisciplinary Journal of Humanities and Social Sciences <www.sncwgs.ac.in/wp-content/uploads/2015/01/2-WOMEN-CRIMINALS.pdf> accessed 16 April 2023

even killed, and those on her side can be insulted. However, the mother-in-law is a symbol of patriarchy and unwittingly participates in it. Therefore, patriarchy is to blame for crimes committed by and against women.

According to the article **“Custodial provisions for women - An Empirical Study of Karnataka Central Prison” Article by Nandini Devarmani, R.N. Mangoli,**⁸ According to the article, women who are incarcerated or in jail are marginalized people. Because of the work they put in, women's position in India has improved. The three key factors that gave women the chance to leave their homes and become known to the outside world were growing urbanization, the rise of globalization and the rise of industrialization. It was difficult for women to live a creamy life, and the other side of the coin a dark existence was revealed as a result of their freedom. This stage led to some women being imprisoned or in protective care. Because it has traditionally been assumed that women are more law-abiding and less likely to commit crimes, criminality of women has been disregarded. The rights of inmates who are women have also been overlooked by policymakers and authorities, much like criminal activity. Since women's involvement in crimes rose quickly due to their changing economic and social environment, correctional justice has taken on particular importance for them. It is necessary to conduct a critical analysis of existing legal provisions, systematic violations, and ways and means, legally and practically, to close gaps in the treatment of women prisoners at various stages of accusation, conviction, and confinement because custodial offences against women prisoners have also increased.

The book **“Women Prisoners in Custody” written by Jayasree Lakkaraju.**⁹ deals with rights of prisoners under Indian law and international law, legislative guidelines for women detained by law enforcement and the courts, legislative provisions pertaining to women in jail detention, legal provisions pertaining to female inmates in non-criminal detention, the role of the judiciary in ensuring prison justice, the circumstances of female inmates in various Andhra Pradesh. After reading this book, researchers learn that criminologists and sociologists have long ignored the circumstances and rights of women prisoners. Various

⁸ International Journal of Law and Legal Jurisprudence Studies: ISSN:2348-8212 Volume 2 Issues 3.

⁹ Lakkaraju Jayasree, *Women Prisoners in Custody* (1st Ed. Kaveri Books, New Delhi 2008)

laws pertaining to women in jail also demonstrate a lack of care for female detainees. The shifting economic and social environment has made custodial justice more significant since women's criminal activity has significantly expanded. The number of crimes involving women prisoners has also increased, necessitating a critical analysis of the laws currently in force, how they are routinely broken, and what can be done to close any gaps in how women prisoners are treated during the various stages of accusation, conviction, and incarceration. This book makes an effort to examine the rights of women in a variety of contexts, beginning at the moment of an arrest and moving through the police, legal, mental, and social welfare systems, as well as jail confinement and the rights now accessible to women. The Judicial Proclamations and suggestions of various commissions for the welfare of women in detention are researched, examined, and given appropriate advice. Researchers, social workers, law students, individuals interested in gender-based issues, prison administrators, and decision-makers will all find this book useful.

‘Right of Women Prisoners in India: an evaluation’ by Dr. Mukesh Garg, Nareshlata Singla¹⁰The researcher read through the writing. After reading this essay, the researcher discovers that Indian society accords women a respected standing. She contributes much to society. The Indian Constitution provides women in India equal rights. It also makes the State responsible for defending women's rights and adhering to international accords pertaining to such rights. But in actuality, there are many issues that women in jail are dealing with. Despite many directives from the Supreme Court, High Courts, and recommendations of various Committees, even her fundamental human rights are being disregarded. Despite many directives from the Supreme Court, High Courts, and recommendations of various Committees, even her fundamental human rights are being disregarded. It causes them problems in jail, which calls for particular treatment and needs to be eliminated. There are fewer female convicts in Indian prisons than male ones. It can be the reason for ignoring the rights of female inmates.

¹⁰ International Journal of Advanced Research in Management and Social Sciences ISSN: 2278-6236, Vol. 1, No. 2 August 2012.

1.4 Aims of the study:

The researcher aims to study the rights of women prisoners in the context of international human rights perspective, national and judicial approach in India

1.5 Research objective:

1. To provide a conceptual analysis on women prisoners in India
2. To discuss the International human rights instruments dealing with women prisoners
3. To examine the National laws relating to women prisoners in India
4. To study the role of Indian judiciary relating to the women prisoners in India

1.6 Scope and Limitation

This work is dealing only with the conditions of the women prisoners in India, so that would be the first limitation of this study, further how the lenient laws has its severe impact on the health, safety, security, social stigma and well-being of the women prisoners. The international laws and framework on the protection of women safety, security, children, education, health and hygiene has also been highlighted in this work. It further extended National legislative framework and the analysis of judicial approach towards improving the conditions of women prisoners and also dealt with the problems and tried to come with a durable solution. Human Rights have no boundaries and it should be equally available to all the human being irrespective of their sex and gender. The scope of this work confines mainly to the legal perspectives of this, due to certain limitation and scarcity of time the researcher has made its best efforts to utilize resource available online to find out the relevant information by using doctrinal methods so that the necessary information and the real underlying reason behind such conditions of women prisoners can prevailed.

1.7 Research Questions

1. What are the issues and difficulties facing by women prisoners in India?
2. What is the International human rights perspective relating to women prisoners?
3. What is the legal framework on women prisoners in India?
4. What is the role of the judicial authorities while protecting of rights of women prisoners?

1.8 Research Methodology:

The methodological approach used by the author while doing research in this study entitled “Women prisoners in India: A Human Rights approach” is doctrinal in nature and due diligence has taken in terms of relevancy of study and whenever any delightful information has been found for the research. The author used books, journals, articles and many other online sources for the purpose of this research. It analysis the role of the government, judiciary and international organs address women related issues in the prison and the researcher also emphasis upon the loopholes prevailing in the practical area despite of the numerous international and national laws governing condition of women prisoners

1.9 Chapterisation:

First chapter is about ‘**Introduction**’ part which speaks about the main terminologies of this work and researcher has tried to delineates the introductory remarks about the topic. It also includes the review of literature, also it provided interpretation of the problem, aims of the study, lastly scope and limitation of the study and the kind of research methodological approach that has been used has been talked about.

Second chapter is about ‘**Issues relating to Women Prisoners**’ where the problems has been addressed and the kind of difficulties face by the women in prison in terms of prison stuff and the education which unable a woman to know their legal remedies and poor hygienic issues and mental stigma that they undergo through and the sexual violence which lead to commission of crimes at times.

Third chapter titled **‘International Human Rights Perspective on Women Prisoners’** which focuses on the study of the international instruments that talks about protection of women prisoners in terms of health, education, safety and security, hygiene and sanitary and the researcher has also worked on the loopholes part which resulted into massive violation of women prisoners.

The fourth chapter titled **‘Laws relating to Women Prisoners in India’** which focuses mainly on the national perspective and the development in Indian legal system on women prisoners

The fifth chapter entitled **‘Judicial Approach on Women Prisoners in India’** shows how the judiciary has responded towards the violation and denial of basic human rights and what are the initiative that has been taken by the judiciary for the working and for the protection of women prisoners and this chapter also analyses in addressing how the judiciary has interpreted every prisoner including women prisoners has the rights to live with human dignity.

The last and final chapter is about the **‘Conclusion and Suggestions’** part where the researcher has tried to conclude the whole chapter by providing some suggestion for the women prisoners and tried to give the general idea regarding how despite of available laws and remedies still women prisoners are the sufferer in the actual life.

Chapter 2

Issues relating to Women Prisoners

Since with every passing day the number of women prisoners are also increasing, the government cannot run away from the protection and facilities by merely constructing a prison. Proper hygiene and sanitation protection required and basic needs and arrangement must be fulfilled for a survival of an individual with human dignity. Government needs to act more responsible when it comes to women protection, simply enacting a laws, rules and guidelines will not help rather after enacting such laws the government should focus more on the implementation part to see if protection and security are given to the women prisoners and whether they have been provided proper hygiene and sanitation and proper food and treatment in case of a pregnant women and other lightening and ventilation facilities. Prison is a place where individual are kept for commission of crimes and accordingly punished but that does not take away the fact that even prisoners has basic human rights and they equally enjoy some fundamental rights. In the past years the number of male prisoners were large in compare to women prisoner but, if we see today's situation the prison are no more gender specific, although it will be wrong to say that are equal in number but if we observe then the population of female inmates has increased recently. However, the suffering are mainly suffer by the women inmates and such condition are not favorable in nature. Given the current circumstances, it is critical to comprehend and value the rights that are available to women prisoners. While there are sufficient requirements for the health and care of the kid, women in prison also live with their young children under the age of 6. Women need to be handled differently than males since they have different needs for personal hygiene and sanitation. As a result, pregnant women's health is also a major concern. In fact, the proportion of female convicts worldwide is 4% lower than that of male prisoners.¹¹ Women nowadays are more independent, right-conscious, and involved in a variety of activities outside the home. Women are now more stressed out and tarnished in their social and personal lives than they were previously as a result of this process. The family's unrest and tranquilly are inevitably disturbed by her fragile connections inside the

¹¹'UNODC (n 1)'

family. Women are more susceptible to deviant lifestyles due to a number of variables, including poverty, illiteracy, gender bias, and many others. The Indian Jail Committee had recommended that structurally separate jails or at least separate compartment for women prisoners be built in India as early as 1919–20 so that female inmates or female visitors entering the jail could get to the female yard without being followed by male inmates. Unfortunately, there hasn't been much progress made in this area. Women inmates frequently have to pass through the male sections of the jails across India. The Committee on Jails in India (India Jail Committee) have time and again emphasized for the separate cells should be created for women accused in each state, where they would be placed along with other female offenders from across the State. The Committee believed that sending women offenders away from their hometowns was preferable to keeping them suffering in terrible circumstances in certain jails inside their own districts. The Committee emphasized the importance of properly classifying convicts and separating young girls from elderly, convicted felons, procurers from women who had up till now led respectable lives. Unfortunately, state governments have not given these recommendations much consideration.

In many jails, female inmates are housed in enclosures that are locked by male staff members. They frequently face exploitation and strange situations. The majority of complaints regarding sexual abuse has been filed with the national commissions. For example- NHRC. According to “the All-India Committee on Jail Reforms 1980–1983”, it is the small number of women in prisons, which in our opinion is to blame for their needs being overlooked. These ladies are imprisoned in tiny groups and are in a very vulnerable position.

The women which are convicted and are behind the bars are largely from remote areas of the nation. According to a renowned scholar¹², "Women in prison are the disadvantaged losers in our complex and competitive society. "When women are behind bars, they can take look over their family and after completion of their designated imprisonment there is problem in finding any work again in India. The Mulla Committee¹³ outlined a plethora of rights for such vulnerable people living under the society, for instance, the most basic necessities like clothing, bedding, drinking water, and medical care, as well as the right to access the law and meaningful employment. Some of the unique issues that women in jail deal with are described in this chapter.

2.1 Prison staff:

In addition, for effective operationalization of the prisons, the jails are required to have the separate medical and other relevant staff as per the requirements of the jails. The National Model Prison Manual 2016 (henceforth referred to as the "National Prison Manual") recognizes in principle that there should be one guarding staff for every six prisoners.¹⁴ There were only 4,391 female penal employees as of 2015, or 8.28% of all employees.¹⁵

Female officers at the supervisory level are in short supply. To oversee women's prisons, employees, and inmates in the state, the "National Prison Manual" recommends that the women DIG who are associated with jails are required to be employed in every jails. The Honorable Supreme Court stated in May 2017 observed that almost in all prisons in India there is lack of employed people as comparison to the desired requirements. The Court ordered to engage more people in jails so it can be operationalized effectively.¹⁶ There is an increasing need for female-only jails, competent female prison guards, full-time female

¹²Ibid 23

¹³'Prison Statistics India 2015 (n 12)'

¹⁴21<http://mha1.nic.in/PrisonReforms/pdf/Mulla%20Committee%20-implementation%20of%20recommendations%20- Vol%20I.pdf>

¹⁵'Prison Statistics India 2015 (n 12)'

¹⁶*Re- Inhuman Conditions in 1382 Prisons* W.P.(C) No.406 of 2013

doctors, pediatricians, etc¹⁷. Due to lack of women staff, the responsibility is on the shoulders of the males to take care of the women accused. There are different requirements of man and women in the prisons these services should be delivered by female employees. The more and more women employees should be hired in the jails staff. So, the prisons work can take up effectively and also the basic fundamental rights of the women should also be not violated. Understaffing is another issue that Indian jails must deal with in addition to overcrowding. To administer the overcrowded jails in the nation, there is not enough staff. The current crew is therefore overburdened. Over the past three years, the average jail employee vacancies have been more than 30% at almost every prisons throughout the country, according to the research.¹⁸ That means that roughly one in three jobs is open. Correctional personnel, cadre staff, and officers make up the prison workforce. Filling these positions contributes to lessening staff workload and improved jail administration

Less than 1% of officers are unemployed in Telangana while more than 75% are unemployed in Uttarakhand. About two-thirds of the officer positions are unfilled in Bihar, Jharkhand, and Chhattisgarh. Additionally, it is observed that with more than 330 inmates per officer, Uttarakhand, Bihar, and Jharkhand have among of the highest inmate to officer ratios. On the other side, there are 17 prisoners for every officer in Tamil Nadu, where there is 9% vacancy and the jail population is at capacity.¹⁹ “The vacancies were below 50% in 9 states/UTs, and zero in Jharkhand, Telangana, and UP.”²⁰ Only J&K, Bihar, and Odisha have followed the benchmark. In UP, which has reported no vacancies, there are 50,649 prison inmates for every correctional employee. Gujarat has a ratio of 15089 prisoners to one correctional officer. The number of inmates per staff has been exceeded in five states in addition to these two.²¹ Karnataka was the state with the highest percentage of female prison employees, at more than 26%. Sikkim, Mizoram, and Nagaland all employ over 20% women. But, neither state nor UT came close to meeting the stated diversity

¹⁷‘Research Studies on Police and Prison Issues (n 14)’

¹⁸MHA asks States to conduct deradicalization session in prisons (*TheHindu* 12 January 2023) <<https://www.thehindu.com/news/national/mha-asks-states-to-conduct-deradicalisation-session-in-prisons/article66366477.ece>> accessed 20 April 2023

¹⁹file:///C:/Users/user/Desktop/dissertation/Prison%20Report%20Compiled.pdf

²⁰Ibid

²¹‘Prison Statistics India 2015 (n 12)’

standard of 33%. “The percentage of women working in prisons was less than 10% in 17 states and UTs, including UP, West Bengal, Telangana, Punjab, and Gujarat.”²²

2.2 Health and Nutrition:

The healthcare is of the utmost importance and it takes under not just the facilities of the healthcare but also it should be cost effective and must be of better quality. The government should made provisions with regard to the segregated medical facilities for male and females.²³It has been suggested here that that the accused which are convicted now and are being sent to the jail should be given vaccination. There may be some jail inmates who are old or who take drugs very frequently they must be given extra care under the prisons. A comprehensive inspection of every prisoner should be conducted by the Chief Medical Officer/Medical Officer (in charge) at least in a month, in addition to daily visits to the prison. The care of female convicts will be provided by lady medical officers. The women who are convicted and are now behind the bars and require medical attention for their treatment should not be put in jails, instead of that they for time being should be kept under under separate mental health cells. Though the state manuals contextualize the provisions for the mental fitness of the convicts but it is still worsening year after year. The medical offices are largely males and women doctors are very less, for instance, gynecologists. Mental health issues are frequently not given enough priority, additionally many women who are not mentally fit are kept under jails, reason being lack of infrastructure with regard to the same.²⁴Three suicides were reported and 48 were natural deaths taking up the total toll to 51 of women deaths in prisons in year 2015.²⁵

The special attention is required to be given to the female health in prisons. For instance, reproductive health. According to the Ministry of Home Affairs²⁶that convicts must

²²‘Research Studies on Police and Prison Issues (n 14)’

²³ UNHRC Report of the Special Rapporteur on the right to mental health
<<https://www.ohchr.org/en/special-procedures/sr-health/right-mental-health>> accessed 20 April 2023

²⁴Justice Krishna Iyer, National Expert Committee on Women Prisoners, ‘Summary of recommendations’ (1987) <<http://164.100.24.208/ls/committeeR/Empowerment/3rd/ANNEXURE.htm>> accessed 3 May 2018

²⁵‘Prison Statistics India 2015 (n 12)’

²⁶ <http://mha1.nic.in/PrisonReforms/pdf/Mulla%20Committee%20implementation%20of%20recommendations%20- Vol%20I.pdf>

undergo substantial adjustments in their perceptions, attitudes, and behaviors in order to make them more socialize. So, the measures can be taken up effectively, the employees should go under the proper training with regard to the specific needs of the women.²⁷

Each State's jail manual lays out an amount of food with recommended calorie for jail convicts. There should be one mess for every one hundred convicts. Three meals should be given to all prisoners in a day, which must be provided in fresh, protected areas with plenty of time for consumption. The Superintendent must be notified of any food-related complaints. But trips to prisons have shown that different nutritional definitions for men and women are sometimes used as an excuse to provide female inmates far less food than male inmates. Although there are complaints of unsanitary cooking and dining spaces, the food quality is generally reported to be satisfactory in most jails. Dining rooms are frequently seen as the most neglected sections in jails, according to the Ministry of Home Affairs, which was evaluating the Mulla Committee Recommendations' implementation.²⁸

2.3 Sanitation:

Basic sanitation and hygiene facilities are typically poor in prisons. One washroom and one shower cubicle should be provided for every ten convicts, according to the Prison Manual, but this is rarely the case in practice. The convicts are increasing day by day but the infrastructure with regard to the toilets is not sufficient in the prisons which raise a major concern for the sanitation. Also, the women toilet should be constructed away from male interference, but it is usually ignored. The likelihood of sexual harassment and abuse of female prisoners can rise as a result of poor toilet and bathroom placement and design. It stipulates that female inmates may take as many baths or showers as necessary.

The major reason for bad sanitation is that there is lack of water facilities in prisons. "It is important to note that the majority (81.8%) of female convicts are in the 18–50 age range, which increases their need for access to acceptable menstrual hygiene products and proper sanitation facilities."²⁹ As per the requirements, they should be provided the napkins but

²⁷UN Bangkok Rules, Rule 33-35 < https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf > accessed 20 April 2023

²⁸ <http://mha1.nic.in/PrisonReforms/pdf/Mulla%20Committee%20implementation%20of%20recommendations%20- Vol%20I.pdf>

²⁹Law Commission of India, *Women in Custody* (Law Com No 135, 1989) para 2.19

again it is usually ignored. “Women are forced to use unsanitary materials like cloth, ash, fragments of old mattresses, newspapers, etc. as a result of this. Strict adherence to state prison guidelines and frequent, sincere inspections are needed to enhance the condition of cleanliness in prisons. To promote the building of more restrooms and their repair in accordance with recognized hygiene standards, prison administrations may want to consider establishing connections with regional Swachh Bharat efforts. Prisoners themselves can be taught to make inexpensive, organic sanitary products. Menstrual hygiene items are also given away free of charge through a number of NGO and CSR activities, which can be used to fund several prisons in each state.”

2.4 Education:

The NPM has outlined the provision for education of such convicts, but subject to the ability of the convict and its background with regard to the education. The jail inmates who would like to continue their education must have access to the books. The prisons must have environment of studying for that there must be proper classrooms and library so that they can study without facing any difficulties. Additionally, each State is required to develop and carry out a policy with regard to education in jails. The involvement of prisoners in educational activities is regarded as another efficient way to uphold order in the jail. So, after releasing convicts from the jails, if they would be giving good educational record it would be easy for them to get employment and get settled easily in the society.

2.5 Legal aid and help

The Indian Constitution's Article 39A guarantees equal justice for all people by offering free legal assistance to the impoverished and weaker segments of society.

The State is obligated by the provisions of Indian Constitution, for instance, Articles 14 and 22(1) of the Constitution to provide laws which are equal and judiciary which provides equal basic opportunity under the current legal regime.

According to the Justice A. N. Mulla Committee, convicts can exercise such rights-³⁰

- the freedom to choose a lawyer of their choice to consult or be represented;
- access to organizations that provide legal services.
- message should be given upon admission on the legal right to appeal, revision, or review a conviction or sentence;
- the records of the courts should be given to pursue an appeal, reversal, or reconsideration of imprisonment given;
- the ability to get any document essential to seek an appeal, reverse, or reexamine a verdict or sentence;
- Right to express concerns and report violations of any or all of one's rights to the prison administration, appropriate government officials, and judicial authorities, if applicable.

“The Legal Services Authorities Act was passed by the Parliament in 1987 in accordance with constitutional principles in order to create a nationwide uniform network for the provision of free and competent legal services to the weaker segments of society on the basis of equal opportunity. Persons in custody have a right to free legal services under the Act. According to the new National Prison Manual, state governments must appoint solicitors who visit prisoners in jail, establish legal aid clinics inside each prison, and offer legal literacy training inside each prison to guarantee that inmates have access to legal representation. Many jails do not have a legal aid cell, and only a small percentage of inmates have access to legal help, according to NHRC³¹ visits to various prisons. States should make sure that local and state legal aid offices are connected to jails and prisons to offer free legal assistance, and all inmates should be made aware of their rights.”

³⁰ Justice A.N. Mulla, *The All India Committee on Jail Reforms* (1980-1983 New Delhi) 190-<<https://www.mha.gov.in/sites/default/files/Mulla%20Committee%20-implementation%20of%20recommendations%20- Vol%20I.pdf>> accessed 24 April 2023

³¹<http://mha1.nic.in/PrisonReforms/pdf/Mulla%20Committee%20-implementation%20of%20recommendations%20- Vol%20I.pdf>

2.6 Sexual violence:

According to the NPM, the male entry should be restricted under the women wards unless doing so is necessary. Female warders and female chief wardens must be on duty constantly. “A female detainee must be permitted to travel from one jail to another or from the jail to the court with a female relative.”³² However, there are several accounts of female prisoners being humiliated or molested while going through this. Across the nation, reports of various forms of violence, including sexual violence have been made by the authorities and convicts. Official reports, however, continue to be understated as a result of inmates' fears of reprisal because they are required to remain in the same location as their offenders. According, to the NPM, women must be given the facilities to have legal aid in case they are facing any kind of violence in the jail. The jail administration has provided the boxes for complaints, the jail inmates can also file a written complaint with help of that box. “The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redress) Act of 2013” it has enshrined provision with regard to the prisoners so they can also file a written complaint with the jail authorities. Every complaint must be kept confidential, so no one take undue advantage of the same otherwise it will destroy the whole purpose of the complaint.

Having said that, the provisions above listed are still short of providing safeguard to the prisoners, the Apex court observed that there are so much cases with regard to the sexual abuse within the jails. The Court directed all states to provide cameras in all jails so a better check can be taken up the daily affairs of the jail.³³

2.7 Children:

If no other arrangements can be made for their care, mothers with children under six are permitted to live in prison with them. This upper age limit differs between States. 1 866 children and 1,597 women prisoners are housed in prison as of last count.³⁴ “Children in

³²Law Commission of India (n 32)’ para 2.28

³³ Shri Dilip K. Basuvs State of West Bengal &Ors. W.P.(Cr) No. 539 of 1986

³⁴Prison Statistics India 2015(n 12)’

jail are legally entitled to food, shelter, medical treatment, clothes, education, and recreational opportunities, according to rules given by the Hon. Supreme Court in 2006.”³⁵

2.8 Contact and resettle with the outside world after release

As per NPM, when women prisoners are released from the jail the notice must be given to the family, friends or nearby relatives of such release. The Mulla Committee recommends that in order to help. “The Prisons Manual outlines jail officials' obligations for post-release support to aid emancipated inmates in reintegrating into society. To facilitate transition, this involves using options like home leave, open prisons, halfway houses, community-based programmes, etc. In some States, a stipend is authorized for the rehabilitation of offenders who have been released on parole.”³⁶ Comprehensive after-care programmes, however, are usually lacking. After-care is crucial for preventing recidivism and ensuring that prisoners undergo long-lasting change.

³⁵*R.D. Upadhyay vs. State of A.P. & Ors* W.P.(C) No. 559 of 1994

³⁶‘Prison Statistics India 2015, (n 12)’

Chapter 3

International Human Rights Perspective on Women Prisoners

Women still make up a very small percentage of the global prison population as a whole. However, studies in several nations have revealed that the number of female inmates is rising at a quicker rate than that of male prisoners. This is in addition to the fact that their numbers are rising in unison with the rise in the overall prison population in many countries.³⁷ More and more women are being locked up for minor offences as criminal justice systems around the world become stricter. In many countries, the strict drug legislations are having huge influence of females in prisons. Women are increasingly likely to be imprisoned for alleged moral crimes in nations where laws are based on particular interpretations of religious laws because they are vulnerable and economically disadvantaged and cannot afford bail or legal representation. Pretrial detention rates for women are sometimes equal to or higher than those for convicted female convicts in several nations.

The provision relating to the detention before the trial has been provided under various national and international conventions, and also the provision should be used after exhausting all available options, though such provision has been enshrined but still the rate of detention is higher of women with regard to the detention before trial.³⁸ Most of these ladies don't even need to be in prison. Most are accused of insignificant, non-violent offences, and don't endanger the public. Due to their hardship and inability to pay fines, many people are in prison. Instead, then being isolated from society, a sizable portion needs treatment for mental illnesses or drug addiction.³⁹ Many of those who are incarcerated as a

³⁷ Women usually constitute between 2 and 9 per cent of a country's prison population, although exceptionally the percentage may be higher. Walmsley, R., *World Female Imprisonment List* (2ndEdn, International Centre for Prison Studies 2012) International Centre for Prison Studies

³⁸ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by the General Assembly resolution 45/110 of 14 December 1990, Rule 6.1.

<<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf>> accessed 24 April 2023

³⁹ The umbrella term mental disability is used to include major psychiatric disorders, e.g. schizophrenia and bipolar disorder; more minor mental health problems, often referred to as psychosocial disabilities, e.g. mild anxiety disorders; as well as intellectual disabilities, following the terminology used by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (See Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Commission on Human Rights, Sixty-

result of discriminatory laws and practices are also victims. More efficiently than incarceration, community punishments and actions would meet the needs of the vast majority in terms of social reintegration. Even, virtually every study emphasizes the particularly negative impacts of jail on women their unique requirements are rarely taken into account when they are detained. There are lot of facilities are available to the men in the jails, one of the reasons for the same is the number of males in the jails in much higher than females, so there are very a smaller number of women in jails so are their services. There are infrastructural issues and even their basic necessities are not available with regard to the women. The rising prevalence of reoffending among women in various nations reflects the inadequacy of imprisonment to address the underlying causes of women's criminal behavior. The shift in the demographics of the prison population has brought to light how few prison systems are capable of providing for the particular demands of female inmates. The need for greater clarity regarding specific issues that should apply to how female inmates should be treated and how they should be dealt with in jail has become particularly urgent and important as the number of female prisoners increases globally. “The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)” were adopted on December 21 in response to the recognition of the need for international standards regarding the treatment of women offenders and prisoners and in consideration of several pertinent protocols have been signed and adopted by international bodies like United Nations that push states which are member to United Nations so the need of women who are accused and convicted and are now behind the bars can be addressed effectively. The women who are generally from underprivileged background they have very less income per year so they suffer from a variety of health issues that may go untreated in the community. Due to their gender, women may suffer additional discrimination and challenges in obtaining adequate community health services. As a result, compared to men, female convicts may require more primary health care.⁴⁰Due to inadequate medical attention, poor hygiene, poor diet, and overcrowding, inmates' conditions may deteriorate while housed in jail. Additionally,

first Session, Economic, Social and Cultural Rights, UN Doc. E/CN.4/2005/51, 11 February 2005, para. 19). In this Handbook the term mental disability refers predominantly to psychosocial disabilities

⁴⁰Møller, L., Stöver, H., Jürgens, R., Gatherer, A. and Nikogasian, H. (ed), *Health in Prisons, A WHO Guide to the essentials in prison health*(WHO Europe 2007) p. 27

all women need regular access to medical professionals that specialize in women's health care because they have gender-specific medical needs.

3.1 UN Standard Minimum Rules for the treatment of prisoners

"It is said that no one truly knows a nation until one has been inside its jails.

*A nation should not be judged by how it treats its highest citizens, but its lowest ones."*⁴¹ -
Nelson Mandela

In 1955, the Standard Minimum Rules for the Treatment of Prisoners established by the United Nations went into effect.⁴² Although not legally obligatory, the UN standards provide direction for both international and domestic law with regard to anyone held in any type of custody.⁴³ In the resolution A/RES/70/175, the General Assembly decided to broaden the purpose of Nelson Mandela International Day, which is observed on 18 July each year. It will now be used to promote humane prison conditions, raise awareness of prisoners' ongoing integration into society, and honour the work of prison staff as a crucial social service. In addition to adopting the updated United Nations Standard Minimum Rules for the Treatment of Prisoners, A/RES/70/175 also agreed that they should be referred to as the "Nelson Mandela Rules" in order to honour the late South African President, who spent 27 years in prison as part of the aforementioned struggle. They are typically viewed as appropriate management principles and practices for custodial institutions. The document outlines requirements for those who are detained, including registration, personal hygiene, clothing and bedding, food, exercise and sport, medical services, discipline and punishment, instruments of restraint, information to and complaints from detainees, contact with the outside world, books, religion, retention of detainee property, notification of death, illness, transfer, and removal of detainees, institutional staffing, and facility inspection. It also lays forth requirements for inmates serving a term, including treatment, categorization and individualization, privileges, employment,

⁴¹ 'UN Social & Economic Council adopted the revised Standard Minimum Rules for the Treatment of Prisoners (n 2)' <https://www.un.org/en/events/mandeladay/mandela_rules.shtml> accessed 26 April 2023

⁴²"Office of the United Nations High Commissioner for Human Rights". accessed 26 April 2023.

⁴³"United Nations Refugee Agency". accessed 26 April 2023

educational opportunities, leisure activities, social interactions, and after-care. So having said that, there are different kind of convicts in jails for instance, some are mentally ill, some are in jails their jail is under process and there is another category, where accused who without being charged are behind the bars for various reasons. The UN Standard Minimum Rules for the Treatment of Prisoners talks about the principle of non-discrimination under rule 2 of SMR⁴⁴. The priority of prisons should be that it functions according to the international instruments that are framed and are in force for the protection of certain basic fundamental and human rights of such convicts in the jails, and also there should be ethical agenda under which prisons should be operationalized.⁴⁵ As said before also, though such provisions are in place but such provisions focus largely upon the men, the reason being the vast majority of convicts in the jails is of males only. So, the women faced indirect discrimination in prisons which is not visible tangibly as such. So women are in less number, still we cannot deny them the basic necessities which are the fundamental for the daily life, being less number they are kept in some very away place from their home of origin which again impact on their social relations, mental fitness and resettlement prospects in the society.

The UN Standard Minimum Rules for the Treatment of Prisoners (SMR) also have the principle of separation of categories under rule 11⁴⁶ which says, that female prisoners should be placed separately from the male inmates and it is believe to be done in order to avoid any form of violence or harassment, however under rule 81 of SMR, so the areas which are segregated for the females must be handled and headed by some women head only.

Whenever there is need to visit in the section segregated for the women, a women must go with male staff member. But only women should look over the women convicts, so this should be read as a rigid rule and there must be some exceptions to the same for instance, doctors and teachers though they are males should be given access to the areas segregated for women. To give women prisoners the best safety possible, there should be clear policies and procedures, so the staff in prison should not use disproportionate force on the convicts.

⁴⁴SMR Rule 2

⁴⁵ For example, Coyle, A., *A Human Rights Approach to Prison Management* (International Centre for Prison Studies 2002)

⁴⁶ SMR Rule 11

The staff should be sensitized to gender issues and given training in the area of sexual misbehavior in all circumstances, the employees should be of equal ratio both men and women, these measures are essential. The very much same provision has been enshrined under the “the UN's Standard Minimum Rules”. The man working in the women prisons should not be allotted such work in which they would be in direct contact with women, it should be avoided at any cost. To protect women from intimidation, abuse, and assault, strict policies and protections need to be in place. Transfers between prisons and between pretrial detention centers and tribunals put female detainees in greater danger of staff abuse. Ample protections must be given to the female convicts in jails, such as requiring that female staff members accompany female convicts in certain specific circumstances. Additionally, CCTV cameras could be installed in transportation-related vehicles and this needs to be closely watched.

This is still not settled that for how much time the children of female prisoners can live with them under custody. The UN Standard Minimum Rules for the Treatment of Prisoners (SMR) under rule 29⁴⁷ talks about the best interest of child concerned to remain with the parents, specialist hold a variety of perspectives, and no agreement has been established. The length of time that children may visit their mothers in prison varies greatly between nations. However, there is universal agreement that the kid's best interests should come first when attempting to decide what should be the proper approach while deciding should women and her child should be segregated when women has been imprisoned and during what age of children. If children do not stay with their mothers, considerations should be given to the circumstances inside the prison as well as the level of care they can anticipate receiving outside the prison. By following this rule, jail officials would have to be adaptable and make judgment based on the specific needs of each child and family. It is far too frequently inappropriate to apply strict standards in every situation since the conditions vary so widely. With regard to the children when they are present in prison for time being, the proper provisions should be with regard to their well-being for instance, proper medical services. The provision can be made with regard to the proper playing and physical fitness of the children. The children should be given chance to spend time with their mothers as maximum as possible. It's crucial that nurseries are accessible in prisons so that mothers

⁴⁷ SMR Rule 29

can engage in activities. The jail administration should work with medical facilities to offer immunizations, check youngsters periodically, and keep track of their physical growth. It is never acceptable to treat inmates' children like prisoners. Punishments for misconduct shouldn't be applied to them. In prisons, safeguards against all types of physical and psychological abuse should be in place for the benefit of the children.

Prenatal and postpartum care ought to be on par with what is offered in the community. To give birth in civilian hospitals, pregnant women need be transferred. If the kid is born within a prison, a medical professional should perform the delivery in spaces designed for giving birth. No matter where the birth occurs, it must be registered right away; nevertheless, the child's birth certificate must not make mention of the fact that it occurred in a prison has been mentioned under rule 28 of The UN Standard Minimum Rules for the Treatment of Prisoner (SMR). The very minimum required in terms of security precautions should be used when transporting expectant women to hospitals and during childbirth. As was already stated, it is forbidden to detain pregnant women while they are being examined, being transported to and from the hospital, giving birth, or right after giving birth. "This would entail, for instance, allowing a mother who needs to breastfeed her kid or care for a sick child to do so during scheduled events and making up for any lost time later (for example, for an education course that requires regular attendance)." Having said that, when women are engaged with the prison work, in that mean time there should be arrangement of nursery with adequate staff who are qualified nurses so they can look over the children. The breastfeeding should never be discouraged unless there are strong medical reasons to do the same. Women who are expecting or nursing should receive dietary guidance as part of a programme that will be developed and overseen by a competent jail doctor. Free, nutritious food must be offered to infants, kids, and nursing moms, including milk, foods high in protein, and sufficient servings of fresh fruit and vegetables. Plans must be developed for properly keeping such things. The women, if their children are newly born, they should be provided with adequate facilities with regard to the health and diet with proper nutritional requirements.

3.2 The Standard Minimum Rules for the treatment of prisoners and the United Nations standards Minimum Rules for Non-custodial Measures(Tokyo Rules)

The UN benchmark Minimum Rules for Non-custodial Measures, adopted by the United Nations in 1990, are known as the "Tokyo Rules" and serve as the primary international benchmark for alternatives to jail. They offer a set of fundamental guidelines to support the employment of non-custodial punishments and procedures, as well as the bare minimum of protections for those who are exposed to alternatives to incarceration. The Tokyo Rules are founded on the idea that there may be viable alternatives to incarceration that are "to the best advantage of both the offenders and society."⁴⁸ The Tokyo Rules list several important principles in acknowledgement of the negative effects that imprisonment has, including:

- Pre-trial detention must only be utilized as a last option.
- It is necessary to create non-custodial substitutes for incarceration as a form of punishment.
- A variety of variables should be taken into consideration when choosing any non-custodial measure or sentence, as well as its terms. This pertains to the kind and seriousness of the crime, as well as the person's background and personal traits if they are accused or found guilty of a crime.
- Non-custodial alternative supervisors and implementers should have professional training and get fair compensation given the nature of their work.
- Additional guidelines for women and kids are added to the Tokyo Rules

The Asia and Far East Institute developed the draught of the “United Nations Standard Minimum Rules for Non-custodial Measures”, its main purpose is to push people engagement under the current legal regime of criminal law so the accused can be treated effectively and with the possibility of reduction of the crimes in the near future. The committee was established with the goal of treating offenders and educating them about

⁴⁸International Standards (*Penal Reform International* 7 June 2016)
<<https://www.penalreform.org/issues/alternatives-to-imprisonment/international-standards/>> accessed 29 April 2023

their social responsibilities, working closely with professionals from around the globe those who are well know with how to deter crimes in the society and those who violates the law can be provided with good treatment. “The first United Nations Conference for the welfare of prisoners adopted the Tokyo Rules, which were completely endorsed by the Economic and Social Council in its resolution 663 C (XXIV) of November 6, 1957.⁴⁹” “The conference for the Tokyo Rules was held in Geneva from August 22 to September 3, 1955”.⁵⁰ The International Penal and Penitentiary Foundation, among other intergovernmental and non-governmental organizations, made a significant contribution to the final version of the draught United Nations standard minimum guidelines for non-custodial measures. “The General Assembly accepted the United Nations Standard Minimum Rules for Non-Custodial Measures in its resolution 45/110 on December 14, 1990”, at the time of the eighth conference, and agreed with the committee's recommendations that the rules be called the Tokyo Rules. Basic guidelines are provided by the United Nations standard minimum rules to support the use of non-custodial methods and to guarantee some essential protections for those who are imprisoned. No matter if they are suspected, charged, or given a sentence, all offenders must receive the bare minimum of protections. The non-custodial sanctions stress that laws must be administered equally to everyone without regard to any discrimination on any ground and provide equal access to non-custodial measures, and assure equal treatment, the authorities must propose some feasible solutions. The protection of offenders and the avoidance of needless incarceration were the principal goals underlying the introduction of the Tokyo Rules. Every nation should support the creation of non-custodial measures, and the majority of them have already done so with concepts like community service, victim-offender reconciliation, compensation orders, and probation with conditions. For the purpose of the staff recruitment no one will be denied employment based on the grounds enshrined under the Indian Constitution or any other status. The staff recruitment policy should reflect the variety of the offenders to be supervised and take into account national affirmative action policies. In addition to allowing women to fulfill their care giving responsibilities while

⁴⁹‘The Tokyo Rules (n 42)’

⁵⁰Ibid 39

serving their sentences, non-custodial procedures and punishments that take into consideration their particular requirements have been shown to be considerably more effective in resolving the causes of their offences than incarceration. Since The Tokyo Rules are based on the premise that alternatives to imprisonment are preferable, those who women prisoners without being looking at their background should not be segregated from their families. In general, non-custodial forms of protection should be employed to safeguard women who require it, such as those provided by shelters run by autonomous agencies, non-governmental organizations, or other community services. When requested by the woman in question, temporary measures involving detention must be taken to safeguard her. In every event, these measures must be under the supervision of court or other competent authorities. Against the desire of the affected lady, such protective measures cannot be maintained.

According to the situation, it has typically been observed that women are jailed for less serious crimes. Custodial sentences should only be considered when a serious or violent offence occurred or the woman continued to pose a threat, as well as after considering the best interests of the child or children and making sure that the necessary arrangements have been made for their care. In order to lessen the negative consequences of incarceration and aid all criminals in their social reintegration, it is crucial that they maintain adequate contact with the outside world. Strong family ties and partner support have been identified as one of the crucial components of a successful social reintegration.

When dealing with female criminals who do not constitute a risk to the public, judicial authorities should be urged to impose alternatives to imprisonment, taking into account their needs for rehabilitation, their obligations, and the particularly detrimental effects of incarceration on women. There must be provisions for instance like non- custodial remedies which must be available other than jails and legislators in India must assure the same, as also required by the Bangkok Rules, Rule 57, in accordance with Rule 8 of the Tokyo Rules. Most of these criminals don't present a danger to the general public. If they were given non-custodial punishments instead of prison time, they might be dealt with far more successfully and at a lower cost to the State.

3.3 United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) were adopted on December 21 in response to the recognition of resolutions adopted by various United Nations bodies, which urged Member States to appropriately respond to the needs of women offenders and prisoners. The UN's Standard Minimum Rules for Non-Custodial Measures (also known as the Tokyo Rules) and the Standard Minimum Rules for the Treatment of Prisoners (also known as the Standard Minimum Rules for the Treatment of Prisoners) are not replaced by the Bangkok Rules, but rather they are supplemented when necessary. This is true for both the treatment of female prisoners and non-incarceration options for female offenders.

While some of the Bangkok Rules clarify existing clauses in “the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules” as they relate to their applicability to female prisoners and offenders, other Bangkok Rules cover new ground. The UN has previously emphasized in numerous contexts that it was becoming increasingly important to address the issue of female offenders before the Bangkok Rules were adopted. For instance, a resolution on the particular requirements of female convicts was adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1980,⁵¹ which suggested that

(a) “in implementing the resolutions passed by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, recognition should be given to the unique problems faced by women prisoners and the need to provide the means for their solution; and

(b) in countries where it has not yet been done, programmes and services used as alternatives to imprisonment should be made available to women offenders on an equal basis with male offenders and being given additional consideration to the unique issues that women offenders face, including as childbirth and child care.”

⁵¹ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, (United Nations 1980) Resolution 9, pg. 12-13 < file:///C:/Users/cyber/Downloads/a-conf-87-14-e.pdf > accessed 3 May 2023

The Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, which was backed by General Assembly Resolution 55/59 on December 4, 2000.⁵² Six United Nations Member States made a public declaration pledging to:

- (a) Consider and address any disparate effects of programmes and policies on women and men within the framework of national crime prevention and criminal justice strategies; and
- (b) “Develop action-oriented policy recommendations based on the unique needs of women as offenders and prisoners”.⁵³

“The United Nations General Assembly's resolution 61/143”, which was passed on December 19th, 2006, emphasized the definition of violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including arbitrary deprivation of liberty, whether occurring in public or in private life," and urged States, among others, to take action. Additionally, provisions of various legal systems should be checked to see if they comply with the non-discrimination principle take proactive steps to avoid discriminatory practices, especially with regard to women who need special care.⁵⁴

Under rule 1 of Bangkok rule⁵⁵ talks about the substantial gender quality which shall not be regarded as discriminatory, supplement rule 2 of SMR, major part why women inmates are usually discriminate because of the fact of belonging to the minority category and lesser representation whereas the Bangkok Rules, it provides that the men and female inmates should have the equal opportunities to all rights and services provided within the prisons and having said that women convicts should be additional facilities that are required as per

⁵²Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (United Nations 2001) Resolution A/RES/55/59 < <https://www.un.org/ruleoflaw/blog/document/vienna-declaration-on-crime-and-justice-meeting-the-challenges-of-the-twenty-first-century/> > accessed 4 May 2023

⁵³Human rights in the administration of justice, (United Nations 2004) Resolution A/RES/58/183, para 15 < <https://digitallibrary.un.org/record/619913?ln=en> > accessed 5 May 2023

⁵⁴ Intensification of efforts to eliminate all forms of violence against women (United Nations 2007) Resolution A/RES/61/143, Items 3, 8 (c), (f) and (m) < <https://reliefweb.int/report/world/intensification-efforts-eliminate-all-forms-violence-against-women-report-secretary-general-a77302-enarruzh#:~:text=In%20its%20resolution%2075%2F161,all%20regions%20of%20the%20world.>> > accessed 5 May 2023

⁵⁵“UN Bangkok Rules (n 30)’ Rule 1

their gender. The management and treatment of female criminals and convicts must be given special consideration as part of affirmative action measures. Those in charge of managing women's prisons should act in accordance with SMR and the Bangkok Rules as well as other standards, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on the Elimination of All Forms of Discrimination Against Women and Girls, and the International Covenant on the Rights of the Child. It's important to recognize that female inmates have demands that are considerably different from those of male prisoners in addition to making sure that women prisoners are not discriminated against in practice. Under rule 29 of Bangkok rule⁵⁶ emphasis on capacity building of staff employed in women prisons. Because for the effective operationalization of the prisons, it is much needed that jail head and other staff must be adequately efficient to take up daily affairs of the prisons. For proper rehabilitation of jail inmates, it is worth noting here that largely the infrastructural facilities play less important role comparatively what staff employee can do effectively. In many prison systems, staff members responsible for watching over female inmates don't receive any additional training to help them deal with their unique needs. Female prison personnel may experience unfair competition and excessive protection in the male-dominated, hierarchical prison environment. They frequently have less control and influence over decisions, and may be suffer from very vice of sexual assault at work only. Due to discrimination and stereotyped attitudes, women have trouble getting promoted. The additional constraints most women experience when juggling work and family obligations compound these issues. The development of policies and plans as well as the implementation of programmes for female prisoners should be the primary responsibilities of senior female prison officials.

There must be a clear managerial commitment that discrimination will not be accepted in order to combat sexual harassment and discrimination at work. Under current national and international laws, women are not well aware of many kinds of sexual assault which are prevalent, and women need to understand that such act of males are unlawful and hence punishable. The women staff in prisons without any fear of retaliation when such unlawful acts are committed against them, must report them to the proper authorities without any

⁵⁶UN Bangkok Rules (n 30)' Rule 29

delay. In addition to meeting the needs of inmates, the mental fitness of women employees should be taken into the account. In many countries, female staff members may have histories of violence, abuse and other unlawful acts which are not accepted at all. Such efforts that target female employees should be supported with training for male employees.

Under rule 4 of Bangkok rules⁵⁷ talks about allocation of women prisoners close to their home to the extent possible in order to social reintegration. Prisoners should be housed close to their family in order to facilitate contact with them. However, because there aren't many women's prisons in most nations, women are frequently given assignments that are far from their families.

The Bangkok Rules require prison administrators to take extra measures, in collaboration with the affected women, to assign women to prisons close to their places of home or their locations of social rehabilitation in order to address this disadvantage suffered by female convicts. Prison administrators may not have the option of completely applying this regulation due to the small number of women's prisons. The relevant ministries should therefore cooperate in putting this rule into practice. They might think about building more modest prisons for women prisoners with a geographic distribution that would allow all the women to live close to where they currently live.

Rule 2 of Bangkok rules⁵⁸ talks about the adequate responsibility at the time of admission of women inmates and children, due to their unique vulnerability at this time, women and children's entrance processes must receive adequate attention. Every prisoner experiences vulnerability when they are first taken into custody. Prison personnel in charge of the admission procedure should receive specialized training to enable them to carry out their duties with professionalism and sensitivity while respecting newly admitted convicts' human dignity. There are a lot of considerations that are into play, for instance, convicts are segregated from their children, past acts, underprivileged and other factors, women prisoners are particularly vulnerable at the time of their admission. The treatment of freshly admitted women and, if relevant, their children, should be handled appropriately by prison staff who have received particular training. Particularly, prison personnel should give

⁵⁷UN Bangkok Rules (n 30)' Rule 4

⁵⁸UN Bangkok Rules (n 30)' Rule 2

newly admitted women written information about their rights and obligations, the steps they must take to exercise their rights and fulfill their obligations, and where they can turn for more information. All newly admitted women should also have this information presented to them orally, or at the very least those who are illiterate. Such material should be given in a language that is understandable to women who are foreign nationals or to anyone else who does not speak the language that is most widely used in the jail. The right of foreigners to speak with their consular agents should be made clearer. Additionally, information on how to get legal aid and representation should be provided to newly admitted women. The opportunity should be given to take advise of authorized advocates. The greatest solution may be for the legal authorities to allow for a brief time of sentence postponement while ladies make plans for their children. In cases where this is not possible, prison officials may give women a brief term of home leave for this reason shortly after admission. Jail officials are required to maintain a current register of inmates that includes all available data with regard to the identity, at what time they were put in jail and reasons for such action.⁵⁹To make sure that everyone who is housed in prisons, whether a prisoner or not, is accounted for, prison authorities must register children who are brought to prison with their mothers.

If the children are not travelling with the mother, the information should at the very least contain their names, ages, and whereabouts. A crucial measure against disappearances is the registration of youngsters admitted to prison. Additionally, it can make sure that such kids' needs are taken into account in jail rules and programmes. The ability to maintain communication between moms and such children will be made possible by knowledge of youngsters living outside of prison. “In order to better understand the situation of female prisoners who are mothers and to improve the suitability and effectiveness of criminal justice responses to female offenders while taking into account the best interests of their children, a current register that includes information about the children of imprisoned mothers is also a crucial component of gathering data about the parental status of women in prison. Information concerning children of imprisoned mothers must be kept private,

⁵⁹ SMR, Rule 7, as well as other instruments, such as The Declaration on the Protection of All Persons from Enforced Disappearance Art 10 and the Body of Principles Principle 12.

which means that it must not be disclosed to anyone else or used in a way that might not be in the child's best interest without the mother's consent.”⁶⁰

Under rule 31 of Bangkok rules⁶¹ it discusses about the behavior of the employees in prisons must be largely towards the protection of females in prison from any sexual assault or any other form of violence. It is now widely accepted that fostering an environment that encourages prisoner cooperation is essential to ensuring prisoner safety and security. The greatest way to secure both internal safety (preventing disruption) and external security is by improving interactions between inmates and staff. Due to the particularly negative consequences excessive security measures can have on women, to the detriment of their mental well-being and chances of social reintegration, an emphasis on dynamic security is particularly suited to the demand of female prisoners. Essential elements of a gender-sensitive approach to jail administration should include fostering a good environment and only employing disciplinary measures when absolutely necessary.

Consideration of women's unique protection needs in prisons is another essential criterion, as females in prisons demand a safe environment above anything else. A State may be held personally liable for torture if a woman in custody is raped by one of its agents, according to international law. If carried out by a state agent, other types of sexual assault or severe physical violence against women such as willful touching and other form of violence that take place against them. States must ensure that women are safe from all types of sexual abuse and assault in jails and prisons and that those who commit such crimes are prosecuted.

Under Rule 25, it says immediate protection for the women reporting the incidents for abuse by supporting and counseling and their claim shall be investigate through independent and competent authority. “It is crucial that women who have experienced any kind of abuse while in police custody, prior to being sentenced to prison, in pretrial detention, or while incarcerated have the ability to report it in confidence and without fear

⁶⁰The Convention on the Rights of the Child Art 16

⁶¹‘UN Bangkok Rules (n 30)’ Rule 31

of retaliation from staff to the central prison administration, judicial authorities, and independent inspectors. Female prisoners should be notified by prison staff of their right to complain and receive written information about the policies and procedures governing complaints. There should also be clear systems in place to allow complaints to be submitted promptly to the appropriate authorities. The appropriate authorities must respond to such allegations quickly and impartially, look into the alleged activities in great detail, and prosecute those responsible. Independent organizations should conduct these complaints' investigations. While their allegations are being looked into and subsequently, if necessary, women who allege they have been assaulted should get urgent protection and monitoring. Since segregation is likely to be perceived as punitive and raises the risk of self-harm and suicide, complete seclusion is not advised. Additionally, segregation does not always offer protection.”⁶²

Prison staff members or other inmates may abuse women who are kept in isolation, often with the permission of the guards. There should be safeguards in place to stop any reprisals from jail personnel. If the suspected perpetrator is a jail officer, giving them a leave of absence while the inquiry is ongoing can be a viable protective measure. Because they were raped while being held by the police or in prison, some inmates may become pregnant. Such ladies ought to have instant access to licensed medical professionals so they can talk about their situation and their options. The greatest community health services with the necessary training and specialization can offer this medical help.

Under Rule 20⁶³, it talks about alternative screening method in case of body invasive searches and Rule 21 of Bangkok rules⁶⁴ mentioned preserve respect and dignity in case of searching children and women in prison or while visiting prison by the children

Individual prisoners, especially those under medium or maximum-security restrictions, may need to undergo routine personal searches to ensure they are not in possession of illicit substances such as illegal drugs or items that could be used in escape attempts or to harm others or themselves. Depending on the situation, these searches may be more or less

⁶² ‘UN Bangkok Rules (n 30)’ Rule 25

⁶³ ‘UN Bangkok Rules (n 30)’ Rule 20

⁶⁴ ‘UN Bangkok Rules (n 30)’ Rule 21

intense. It is never appropriate for male staff personnel to conduct pat-down or frisk searches on female prisoners. Women should only be searched, and only by women, who should be taught to respect the privacy of the prisoner being searched.

The Bangkok Rules specifically state that strip searches and intimate body searches must be replaced with other, less intrusive techniques of searching. As a result, it would be preferable if intimate body searches were never performed because they violate inmates' personal dignity and are almost always extremely upsetting, if not traumatizing, experiences. As recommended by WHO⁶⁵, it may be adequate in many instances to keep a prisoner under careful observation and wait for any allegedly unlawful objects to be naturally evacuated. Scanners are one example of an alternative screening procedure that could be used. Internal searches and strip searches, if allowed at all, should never be done frequently and should only be done if legally required.⁶⁶ The strip searches, which should be performed in a private room, only female staff members should be present. No prisoner regardless of gender should be made to feel humiliated or forced to fully undress during a search. But in the case of women, additional sensitivity should be used because they are likely to feel humiliated by having their private areas searched.

Children can typically be searched using a pat-down search. Given the child's age, the rationale behind the search should be communicated. It is best to search the child in front of the child's mother. Care should be made to minimize any distress to the child and mother during the search of an infant or kid's personal possessions (such as underwear, baby food, feeding bottles, diapers, etc.) and to behave in accordance with hygiene regulations. Due to the great worry brought on by their quest, women convict in some institutions have stopped receiving visits from their kids. Never should intrusive body searches be performed on children.

Rule 22 says⁶⁷, non- application of disciplinary segregation or close confinement to any pregnant women or any mother breast feeding her child. Solitary confinement or disciplinary segregation should only ever be used as a last resort for any prisoner and for

⁶⁵ 'Møller, L., Stöver, H., Jürgens, R., Gatherer, A. and Nikogasian, H. (n 44)' p. 36

⁶⁶'UN Bangkok Rules (n 30)' Rule 20 and European Prison Rules Rule 54

⁶⁷'UN Bangkok Rules (n 30)' Rule 22

the least amount of time. Prison officials should utilize this technique sparingly and with awareness of the discomfort that isolation has on female inmates as well as the increased risk of suicide and self-harm among women. It is unacceptable to use disciplinary segregation as a form of retaliation for self-inflicted harm or suicide attempts. In such situations, it is advisable to use alternative forms of defense and treatment, both under the supervision of a mental health professional.

Rule 24,⁶⁸ talks about instrument of restraint never be used during birth, labour, immediately after birth All inmates, without exception, should only ever be subjected to instruments of constraint as a last resort and for the shortest duration practicable. They must never be applied as sanctions. Irons and chains are never allowed to be used.

It is unacceptable to confine pregnant women during medical tests, while being transported to the hospital to give birth, or during and right after delivery. At certain times, additional security measures should be utilized, such as tight female employee supervision. Restraints are expressly forbidden by the Bangkok Rules during labour, delivery, and the immediate postpartum period.

3.4 The United Nation Standard Minimum Rules for the Administrative of Juvenile Justice (the Beijing Rules)

The United Nations General Assembly enacted resolution 40/33 on November 29, 1985, which is frequently referred to as the "Beijing Rules" or "the United Nations Standard Minimum Rules for the Administration of Juvenile Justice". The resolution pushed the member nations to add such regulations into their individual juvenile justice laws. The first law addressing the care and protection of children to be passed on a national level was the Juvenile Justice Act of 1986.⁶⁹ The Children Act of 1960's general structure and key features were retained, although it was executed differently. Later, in 2000 and 2006, a revised Act was introduced. To circumscribe every single situation wider provisions for children in conflict with the law , the amended "Juvenile Justice (Care and Protection) Act

⁶⁸UN Bangkok Rules (n 30)' Rule 24

⁶⁹Kishita Gupta, Implementation of the Beijing Rules, 1985 in the Juvenile Justice (Care and Protection) Act, 2015, (*Blog.ipleaders* 16 August 2021) <<https://blog.ipleaders.in/implementation-beijing-rules-1985-juvenile-justice-care-protection-act-2015/>> accessed 9 May 2023

2015 (hereinafter referred to as the JJ Act)” was introduced in response to the Nirbhaya rape case and also look over the standards outlined in the “Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rule).”⁷⁰

Rule 26.4 of Beijing Rules enshrined fair treatment of young female offenders. This section offers guidelines on how to handle girls in jail and the precautions that must be taken to keep them safe from mistreatment and hazardous conditions because largely nations confine females in dispute with the law behind the bars.⁷¹As an additional safety against abuse, girls should be kept apart from boys and exclusively under the supervision of female staff members. The severity of the vulnerability of girl prisoners has been shown by reports of significant abuse by male employees in adolescent girl jails where mixed gender staffing has been used. Girls who are abused by an adult while incarcerated are particularly vulnerable to extra trauma since a high percentage of them have already been subjected to violence or abuse.

According to reports⁷², jail officials may specifically target girls who have already experienced sexual abuse or exploitation, similar to adult women in a similar situation, causing them to repeat the pain of the earlier experience. Due to the fact that girls make up a very tiny percentage of inmates in most prison systems, the disadvantages that women prisoners suffer relative to their male counterparts are considerably more severe in the case of girls. Girls sometimes are not segregated from adult prisoners because there aren't any special facilities for them, endangering their safety. Due to their low population, girl convicts are more likely to have even less access to appropriate educational and vocational training facilities than adult women or boys. Any programmes offered to kids in prison were probably created with the needs of guys in mind. Girls are not likely to have access

⁷⁰Ibid 48

⁷¹ For example, in the United Kingdom, the total number of custodial sentences for children rose by 56 per cent between 1992 and 2006; those imposed on girls increased by 297 per cent. (See Nacro and CfBT Education Trust, Review of provision for girls in custody to reduce reoffending, prepared by Nacro youth crime section 2009 <www.cfbt.com> in the United States, the proportion of girls among incarcerated children grew from about 12 percent in the mid-nineties to 15 percent in 2003. American Civil Liberties Union, Custody and Control: Girls in the Juvenile Justice System <<https://www.aclu.org/womens-rights/custody-and-control-girls-juvenile-justice-system>> accessed 9 May 2023

⁷²‘UNODC (n 1)’

to therapy or gender-sensitive medical care for possible physical or sexual abuse they may have experienced prior to being imprisoned. Due to potential social stigmatization, lack of sufficient facilities for pregnant females, and difficulty dealing with pregnancy, pregnant female convicts etc.

The education training afforded to female prisoners must be on par with that provided to male inmates outside of jail. Similar to adult female convicts, they must to get regular access to gynecologists and instruction on women's health issues. The provision of competent care, education, vocational training, and secure security, only to help and to ensure a socially productive and positive role in society

Under rule 15 of Beijing Rules, the juvenile offender has the right to be represented by an attorney during the entire process, and they also have the right to request free legal assistance if that option is available in the country where they are being prosecuted. The competent authority would require the parents and guardians to take part in the proceedings because they have a responsibility to watch out for the juvenile. However, in a few instances, the parents' involvement may be refused if the appropriate authorities decide that their exclusion is required.

3.5 Body of principle for the protection of all person under any form of detention or imprisonment

Unanimously, on December 9, 1988⁷³, the General Assembly of the United Nations adopted a "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment." The Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights began working on this document in 1976. The Sub-Commission authorized a Draught Body of Principles in 1978 based on a concept created by Mr. Erik Nettle of Austria. It was forwarded to a working group after being presented to the Third Committee of the General Assembly, which

⁷³Tullio Treves, 'The UN Body of Principles for the Protection of Detained or Imprisoned Persons' (2017) American Journal of International Law
<<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/un-body-of-principles-for-the-protection-of-detained-or-imprisoned-persons/8F48394A27D64536D73DF02EA245CDF1>> accessed 15 May 2023

considered it in 1980 but was unable to finish its duty. The topic was then transferred to the Sixth Committee, which sent it to a working group with no set end date. From 1981 through 1988, this working group convened during each General Assembly session and made little progress towards finishing its assignment

“Principle 5(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment” it talks about the special need of women in jails should be taken into account while framing any policy with regard to the same.

Such management approach and style must go hand in hand with services that must taken into account the special needs of the women inmates, including those related to their mental and psychological health, the upbringing of their children, and specific health and hygiene requirements. Women prisoners need to be aware that their demands are considerably different from those of men, in addition to making sure that they are not discriminated against in practice for example, in maintaining relationships with their families or having access to prison activities.

Consideration of women's unique protection needs in prisons is another essential criterion, as females in prisons require a safe environment above anything else. A State may be held personally liable for torture if a woman in custody is raped by one of its agents, according to international law. If carried out by a State agent, other types of sexual assault or severe physical violence against women such as willful touching and other forms of violence. States must ensure that women are safe from all types of sexual abuse and assault in jails and prisons and that those who commit such crimes are prosecuted.

“Principle 20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment” says, The one of essential element of the resettlement in the society is the place of keeping person in prison must be as far as possible should be near to the place of home it plays a significant role after release of convict from jails. However, because there aren't many women's prisons in most nations, women are frequently given assignments that are far from their families. The Bangkok Rules require prison administrators to make additional efforts to assign women to prisons near to their

homes or locations where they receive social rehabilitation, taking into account the disadvantage that women prisoner's experience.

The responsibility for research, evaluation, policy formulation, and implementation of policies relating to female prisoners should fall under the purview of a central department responsible for women's prisons, with female senior staff, in order to ensure that gender sensitivity becomes an essential component of the management of women's prisons. The management of women's prisons needs to be evaluated using quantifiable criteria, and this review needs to be done frequently by both the jail service and outside organizations.

3.6 UN Principles and Guidelines on access to legal aid in criminal justice system

The Access to Justice Initiative convened a group of about 20 indigent defense experts on January 7, 2013, to inform them of the newly adopted United Nations Principles & Guidelines on Access to Legal Aid in Criminal Justice Systems and to seek their practical guidance as the UN and its member states begin to use the Principles & Guidelines to guide actual reforms. The Principles & Guidelines were formally approved by the UN General Assembly in December 2012, at which point they became the first international legislation on indigent defense. Throughout the adoption process, the Department of Justice actively supported the Principles & Guidelines.⁷⁴ The work of non-governmental organizations and member states resulted in the development of the Principles & Guidelines over a period of years.

“The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly in 2012,⁷⁵ recognized the significant role of legal aid and required Member States to establish credible, sustainable, and effective legal

⁷⁴UN General Assembly Adopts Principles and Guidelines on Indigent Defense (*The United States Department of Justice Archives* 12 February 2013)

<<https://www.justice.gov/archives/opa/blog/un-general-assembly-adopts-principles-and-guidelines-indigent-defense>> accessed 17 May 2023

⁷⁵ Access to Legal Aid (*UNODOC*) <<https://www.unodc.org/unodc/en/justice-and-prison-reform/legal-aid.html>> accessed 17 May 2023

aid systems with specialized services for groups, including women and children. Legal education, access to legal information, services provided through alternative dispute resolution mechanisms, and restorative justice procedures are all included in legal aid, which is defined as "legal advice, assistance, and representation that is provided at no cost for those without sufficient means or when the interests of justice so require."

"The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems", recognizing the difficulties and disadvantages that many women confront in the criminal justice system. In accordance with a number of specific provisions in these principles and guidelines, special steps must be taken to make it easier for women to access legal aid. Prison officials must educate female inmates about their legal rights, allow them access to solicitors or paralegal services, provide spaces for meetings with solicitors and, if necessary, provide interpretation services in order to lessen their vulnerability in the current legal regime on the criminal law.

Having said that, there are also problems with the obtaining law advice with regard to the same in a nation like India, so the legal aid establishment are best in such situation for underprivileged women under current legal regime of criminal law.⁷⁶When making requests or complaints about their treatment or the conditions of their detention, notably when they are dealing with significant disciplinary charges, female inmates may also need legal assistance.

Guideline 4 which talk about Legal aid at the pretrial stage, the fundamental rule that ought to be considered every prisoner who is not found guilty and given a punishment by judicial authority is that they ought to be treated as not guilty until such time as a sentence has been laid down. However, because there is a lack of accommodations for female prisoners, this principle is frequently applied in a discriminatory manner against women.

It can result in unproven women being imprisoned in prisons alongside criminals in several nations

⁷⁶ For further guidance on paralegals, see United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems Guideline 14 < https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf > accessed 21 May 2023

Automatically designating pretrial detainees as high risk prisoners is an even less acceptable practice. For instance, it has been claimed that in some nations, people who are detained on in custody are automatically labeled as "maximum security" inmates, with corresponding limitations on their ability to own personal property and their right to visitation privileges, among other things, this has an effect on the sentenced women who are imprisoned alongside them.⁷⁷ Because of the existence of remand prisoners, medium- and minimum-security inmates are effectively allowed to complete imprisonment in a setting which would be harsher than is required for their current status.⁷⁸

It is inappropriate in all circumstances to classify people who have not been convicted of a crime as high security, but it has an especially negative effect on women since they are more distressed when subjected to high security conditions, which may include limiting family visits. Separate housing should be provided for those awaiting trial and those who have been convicted.

Prison managers must make sure that a different regime is in place for individuals who have not yet been found guilty if unusual circumstances make it impossible to strictly enforce the norm separating untried convicts from those who have been found guilty. This would entail that these women should have access to all the privileges enjoyed by pretrial detainees, including visiting regulations and other necessary basic requirements. In particular, every effort should be taken to prevent women from experiencing more than necessary disruptions in their relationships with their families and children.

Access to legal representation at all times is a crucial condition for those being held for trial. Prison officials should help inmates find solicitors and arrange for their meetings with solicitors. Women, who frequently lack literacy skills, confidence, knowledge of their rights, and have psychological problems, are in great need of this kind of help.

Other requirements specifically applicable to women are included in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which take

⁷⁷ Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners (*Peace Women* 2008) p. 84 <<https://www.peacewomen.org/node/89235> > accessed 21 May 2023

⁷⁸ Eileen Baldry, 'Beyond Bars Alliance NSW, Submission to the Anti-Discrimination Commissioner for an Inquiry into the Discrimination Experienced by Women Within the Criminal Justice System in New South Wales' (2005) <<http://www.sistersinside.com.au/media/NSWADCreport.pdf> > accessed 21 May 2023

into consideration their needs as being women in society. They push that authorities must implement a proactive strategy to increase women's access to justice, including the incorporation of a gender lens into all legal aid-related legislations, policies and practices; the availability of female solicitors to defend female respondents and the provision of legal aid to women sufferers of vehemence.

Chapter 4

Laws Relating to Women Prisoners in India

Women make up between 2% to 8%⁷⁹ of the prison population worldwide, which is a minority, but the jails in India have been created with the mindset of men and there are hardly any facilities for women in prisons. What so far has been done is the jails which were for males have been transformed so it can be used for women as well. So, this leads to the failure on the part of jail authorities to provide adequate facilities for women. Women who are incarcerated frequently have their basic human rights and dignity violated. Over the past ten years, the ratio of female jail inmates is exponentially rising in many countries including India.

Additionally, the pace of increase in the number of female prisoners is substantially higher than the rate for male prisoners.⁸⁰ Already, more than one in ten convicts is women in eleven different countries.⁸¹ In certain nations, the rise in the proportion of women incarcerated is primarily related to the growing use of prison time to punish actions that were formerly dealt with through penalties other than under the custody. For instance, drug offences. Women's poverty and criminal activity are highly correlated.

The women are unable to pay price for taking bail or tiny crime fines, women are more susceptible to being held. Women in jail is a sizable portion of the prison population for women in several nations. Most female criminals originate from economically and socially underprivileged areas of society.⁸²

Most female criminals have been victims of violence or sexual abuse. However, incarceration of women is more stigmatized than that of men. Female convicts have

⁷⁹Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for prison staff* (International Centre for Prison Studies Handbook 2002) p. 131

⁸⁰ Box: based on information provided to the Quaker UN Office by the respective Governments (The Australian Institute of Criminology) <<http://www.aic.gov.au/topics/women/stats/corrections.html>> accessed June 2023

⁸¹ In Bahrain (18.5%), Ecuador (10.7%), Kuwait (14.9%), Laos (10.5%), Maldives (21.6%), Monaco (29.7%), Myanmar (17.8%), Singapore (10%), Thailand (15.1%), United Arab Emirates (11.4%) and Vietnam (12.3). <<http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/>> accessed 26 May 2023

⁸² Women in the criminal justice system, Background paper for the workshop on women in the criminal justice system, Tenth UN Congress on the Prevention of Crime and the Treatment of Offenders (2000) para 8

different requirements and concerns than male prisoners. Women in prison frequently take on the single or major care of small children in addition to their other household works.

There is differentiation in health requirements when it comes to the health of females in jails. For instance, they may get pregnant while serving their sentence and gave birth to the children then and there. The issue of Mental fitness is highly prevalent among female convicts. While issues like overcrowding, unsanitary conditions, and limited visiting facilities impact both men and women convicts, there are numerous worries that are peculiar to women prisoners or that affect them differently or more harshly. Women who belong to specific groups, such as female juvenile offenders, disabled women, foreign-born women, and women of indigenous and other minorities, have additional needs that are unique to them as women. These are talked about in this commentary.

The non-violence, respect for one another, and human dignity of the individual are the cornerstones of the Indian socio-legal system. If someone violates the law, it doesn't mean that they stop being a person and cannot be denied the rights and freedoms that are essential to maintaining human dignity. Even prisoners have rights since torture in jail is not the final medication in the justice pharmacopoeia but rather an admission of failing to treat living people with justice. All fundamental rights are enforceable for a prisoner; however they are limited due to their incarceration.⁸³The Universal Declaration of Human Rights, which was first adopted in 1948,⁸⁴ represents a movement within the United Nations Organization to establish some fundamental guidelines for the administration of justice. The Indian constitution, which was drafted about at the same time, contained many of the measures in response to international criticism. Human rights apply equally to both free people and those who are being investigated by the law, i.e., the "accused." The Indian Constitution's authors regarded the Common Law axiom "A man is presumed innocent until he is proved guilty" as inviolate

⁸³ www.legalserviceindia.com/article/po.htm accessed on 6-4-18

⁸⁴Universal Declaration of Human Rights 1948 < <https://www.un.org/en/about-us/universal-declaration-of-human-rights> > accessed 26 May 2023

4.1 The Prison Act 1894

The idea that human dignity should be protected despite confinement was adopted. As a result, several laws were passed globally. Despite colonial authority, India passed a number of criminal justice-related Acts. All of these laws granted the relevant government the authority to exert control over the operation of jails and the correct treatment of convicts. These laws all include measures for the rehabilitation of convicts, which is necessary for a functioning community. There are provisions for both the management of prisons and the treatment of prisoners in the Brostal School Act, Habitual Offender Act, Civil Jails Act of 1874, among other laws.

In addition to these laws that apply to the entire nation, many state governments have passed a number of laws to address specific local issues including fulfilling the internal requirements. These Acts make it clear that the President had broad authority over the operation of prisons. Even the judiciary was silent and concurred with this view until the 1980s.⁸⁵ However, gridlock in jails, protracted detention of convicts awaiting trial, bad living circumstances, a lack of programming for fair treatment, and claims of an apathetic or even inhumane attitude on the part of prison officials have regularly drawn criticism over the years.

Although several studies on the overall state of inmates and their treatment in jails in relation to the laws and regulations regulating the administration of prisons were conducted, relatively few attempts were made to examine the issues from the perspective of female prisoners.⁸⁶

Not only have the current rules utterly failed to address these issues in jails, but they have also shown little concern for the women inmates' dignity. Depending on the societal circumstances, the therapy needed for the female convicts changes depending on where they are in life. The lawmakers have chosen to overlook this truth. The ladies were never treated differently than males; they were always referred to as "prisoners." Perhaps during that period, there were not many female prisoners or the percentage of female crime was

⁸⁵Lakkaraju Jayasree (n 9) p. 115

⁸⁶ One such study was made by National Expert Committee on Women prisoners (1986-87)

low. Whatever the reasons, the female detainees were not given preferential treatment. In order to address the rights and concerns of women convicts, relatively few provisions were included in the legislation. The first law governing jail control in India was passed in 1894 under the name Prisoners Act. This Act primarily focuses on prisoner reformation in relation to prisoners' rights; the following parts of the Prisoners Act of 1894 discuss the rights of women inmates in India.

Only two provisions for the protection of female inmates are included in the Prisons Act of 1894.⁸⁷ Additionally, this Act featured provisions for the demands of modern correctional thought.

1) Separation of prisoners

The Prisons Act of 1894 has the following unique measures that are intended to safeguard female inmates regarding the separation of inmates, there is a clause under section 27(1), it states: "In a jail that houses both male and female inmates, the female inmates should be imprisoned in different buildings, or distinct areas of the same structures, so as to avoid their seeing, chatting, or engaging in any sexual activity with the male inmates."⁸⁸ Separate prisons for convicted and unconvicted criminals must be maintained.⁸⁹

2) Safety from fellow prisoners

Under section 24(3) The Prisons Act of 1894 provides before a prisoner is let into the jail, he must be searched, and any items discovered during the search must be given to the jailor in order to secure the physical safety of the inmates from other convicts. Under general or particular orders from the Medical Officer, a Matron is required to search a female prisoner⁹⁰

⁸⁷Prisons Act 1894

⁸⁸ The prisons Act1894 (Act IX of 1894) s. 27 (1)

⁸⁹ Ibid s. 27(3)

⁹⁰ Ibid s. 24(3)

4.2 The Constitution of India 1950

India has one of the most progressive constitutions, with special provisions for advancing gender equality and the advancement of women. These rights may be limited; nevertheless, if doing so serves the interests of society as a whole and liberties of prisoners must be temporarily constrained. Surprisingly, it does not specifically guarantee the rights of women prisoners; however, certain rights listed in Part III of the constitution are also available to the prisoners because a prisoner continues to be a "person" while incarcerated and is entitled to the fundamental freedoms guaranteed by the Constitution. The right to personal liberty is protected by Article 21 of the Constitution⁹¹, which also prevents any inhumane, cruel, or degrading treatment of anyone, whether they are citizens or foreigners. Any infringement on this right is subject to the penalties outlined in Article 14 of the Constitution,⁹² which protects the right to equality and equal treatment under the law.

Within the boundaries of India, the State shall not deny anyone the right to equal protection under the law or equality before the law. The principle that like things should be treated similarly and the idea of reasonable categorization as stated in Art. 14 have been very helpful guides for the courts in identifying the category of inmates and the grounds for those classifications⁹³.

Justice, liberty, and equality of opportunity and position for all Indian people are among the values proclaimed in the preamble of the Indian constitution. The Indian Constitution appears to have been written with the goal of eradicating injustice and inequality, not only between different classes but also between different sexes, according to a review of its provisions. On the other side, they have enacted measures in the constitution's main body to promote the welfare and well-being of women and children.

⁹¹The Constitution of India 1950, art 21

⁹²The Constitution of India 1950, art 14

⁹³The Constitution of India 1950, art 14 and 21

The constitution's Article 14 lays out the core concept of "equality." To ensure equality for all, articles 15 and 16 forbid discrimination on specific grounds.⁹⁴

Art. 15(1), among other things, forbids discrimination based on any one of the following: race, caste, sex, place of birth, or religion. The State may establish specific arrangements for the promotion of women and children under Article 15(3) of the Constitution this clause permits unique female-specific legislation⁹⁵.

The Rajasthan High Court determined in *Choki V. State of Rajasthan*⁹⁶ that this provision is legitimate on the grounds that it offers particular provisions for women and is thus protected by Art.15(3) of the Constitution. According to Art 15(3).Nothing in this Article shall prohibit the State from establishing any particular provisions for women and children⁹⁷

The Indian Constitution's Article 16 specifically addresses equality of opportunity for everybody in government employment and forbids discrimination against women. There must be equal opportunity for all citizens in matters relating to employment or appointment to any office under the State, and no citizen shall be excluded from or subject to discrimination in connection with any employment or office under the State on the basis of their religion, race, caste, sex, descent, place of birth, or residence, or any combination of these factors.⁹⁸

Human trafficking is forbidden by Art.23 in the following ways:

- "Beggaring" and other similar types of forced labour are illegal, and anyone found in violation of this rule will be prosecuted according to the law."⁹⁹
- Nothing in this Article prohibits the State from requiring mandatory service for public reasons, and when doing so, the State shall not discriminate solely on the basis of religion, race, caste, or class, or any combination of these.¹⁰⁰

⁹⁴The Constitution of India 1950, art 21

⁹⁵The Constitution of India 1950, art 15

⁹⁶ AIR 1957 Raj 10

⁹⁷The Constitution of India 1950, art 15(3)

⁹⁸The Constitution of India 1950, art 16

⁹⁹The Constitution of India 1950, art 23 (1)

¹⁰⁰The Constitution of India 1950, art 23(2)

In all other basic rights, the terms "citizen" and "persons" mean both male and female persons. Discrimination against women is expressly forbidden in Articles 15 and 16.

So, it can be safely concluded that males and females should have an equal opportunity for the mere basic rights when they are behind the bars.

Part IV of the Indian Constitution contains the Directive Principles of State Policy. Many of the policies are particularly made so the maximum protection can be given to the women. According to Article 39, the State must focus its strategy in particular on securing¹⁰¹

- That the citizens, men and women equally, have the rights to an adequate means of livelihood, and¹⁰²
- that there is equal pay for equal work for both men and women¹⁰³
- that the wealth and strength of workers, men and women and the tender age of children are not abused¹⁰⁴

According to Article 39A, "the state must ensure that the functioning of the legal system promotes justice on the basis of equal opportunity and must, in particular, provide free legal aid, through appropriate legislation or schemes or in any other way, to ensure that no citizen is denied the opportunity to secure justice due to a financial or other disability."¹⁰⁵

Every citizen has a basic obligation under Art. 51 A(e) to refrain from acts that are demeaning to women's dignity, among other things.¹⁰⁶

The Constitution's provisions granted women certain special privileges, the Indian constitution, however, has no specific protections for the rights of convicts who are women. The only rights that apply to the accused ladies are universal ones. Only Article 15(3) of the Constitution safeguards the interests of female convicts. This Article enables the State to include Special clauses that assist women and children in the current legislation. This assurance must be upheld by laws safeguarding the interests of the women held in various custodies.

¹⁰¹The Constitution of India 1950, art 39

¹⁰²The Constitution of India 1950, art 39(a)

¹⁰³The Constitution of India 1950, art 39(d)

¹⁰⁴The Constitution of India 1950, art 39(3)

¹⁰⁵The Constitution of India 1950, art 39A

¹⁰⁶The Constitution of India 1950, art 51A (e)

4.3The Code of Criminal procedure 1973

The Criminal Procedure Code (CRPC) is created to build the machinery required for crime prevention for instance, the capture of suspected criminals the collection of evidence etc. Therefore, the purpose of the CRPC is to offer an appropriate mechanism and a fair process for the implementation of criminal law. Although the (CRPC) is liberal and progressive and has a number of safeguards to protect the rights of the convicts, it is not able to make a distinction among accused women and criminals. If, any extra safeguards are provided to the accused women, they are insignificant. As women a separate category in Indian culture and in the way police them, there is utmost requirement for some steps should be taken for females convicts at every level. With this wide perspective in mind, the (CRPC) provisions are examined under two primary headings:

Pre-trial Procedure

The first step that a police officer or other authorized person must do is the investigation. It encompasses all of the legal actions taken in accordance with the Code to gather evidence, locating and apprehending suspects, questioning witnesses and putting their statements in writing, searching the area and seizing items deemed important for the trial.

The Code grants the police officers broad authority to carry out their responsibilities during each of these phases, within the bounds of reasonable constraints. In general, the police encountered women while doing their responsibilities in the following situations:

- Arrest
- Search of place and person
- Examination of women accused & witnesses
- Police remand
- Detention in police lockup

The Cr.P.C. introduced particular regulations with regard to searches of a person and place and examinations of women who are acting only as witnesses in each of the aforementioned five scenarios. The following are the current Cr.P.C. provisions applicable to women accused

1) Arrest:

The interests of the accused ladies were not protected until 2005. It was the first time that Section 46 of the Cr.P.C. received a new Subsection (4).¹⁰⁷ In accordance with this subsection, women may not be arrested before or after sundown unless absolutely necessary. Furthermore, according to this subsection, a female police officer must request the first-class judicial magistrate's prior approval in unusual cases by filing a written report with the court in the locality where the crime was committed or the arrest was made. The Amendment Act of 2005 added a new Section 50-A to Section 46 in addition to this subsection (4). A person making an arrest is subject to obligations under this section. Any of his/her acquaintances, family, or other people that the arrested person may reveal or nominate for the purpose of supplying such information must be informed of the custody where the detained person is being held. The person in charge is also required to explain the arrested individual's rights under subsection (1) as soon as possible after the person is transported to the police station.¹⁰⁸ Additionally, a record of the information on who has been notified of such a person must be recorded in a book that will be kept at the police station in accordance with any format requirements established in this regard by the State Government.¹⁰⁹

2) Search of place:

When making an arrest, the policeman has the authority to search a location¹¹⁰. An owner of a home has a legal obligation to allow law enforcement and anybody acting on an arrest warrant to make arrests at the time of any search of any location. The police officer or anyone else executing a warrant has the right to use force to gain access into

¹⁰⁷ Inserted by the Code of Criminal Procedure (Amendment) Act, 2005 (25 of 2005)s.6

¹⁰⁸The Code of Criminal Procedure (Amendment) Act, 2005 (25 of 2005)s.s. (2) of s.50-A.

¹⁰⁹ Ibid Sub-sec (3)

¹¹⁰Cr.P.C. 1973,s. 47

the home for the purpose of searching it and also to free himself if he is being held within the home if such facilities are refused or obstacles are placed in the way of the search.

“These powers are subject to reasonable restrictions, such that the police officer entering any such place shall give notice to any such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and shall enter it if such place is a flat in the actual occupancy of a female (not the person to be arrested), such female being a 'purdanashin' women-who, according to custom, does not appear in public.”¹¹¹

Officers who willfully violate this proviso's requirements are subject to punishment under Section 166 of the I.P.C.¹¹²

3) Search of person

An arrested individual may be searched by a police officer.¹¹³The police officer performing the arrest may search the suspect and take any items found on him that are not required wearing clothing into safe custody whenever the suspect cannot be allowed to bail or is unable to post bail. Such a person should be provided with a receipt listing the items that were thus seized. When it is essential to make a female subject to a search, another female must conduct the search while adhering strictly to politeness.¹¹⁴ Additionally, in accordance with Section 100(3) of the Criminal Procedure Code, which governs searches and seizures, it is mandatory that a female be searched by another female in a decent manner.¹¹⁵

¹¹¹Cr.P.C. 1973, Proviso of sub- sec. (2) of Sec.47

¹¹² S.166 IPC provides; “whoever, being a public servant, knowingly disobeys any direction of the law as to the way which he is to conduct himself on such public servant intending to cause, or knowing it to be likely that he will, by such disobedience cause injury to any person shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both”

¹¹³Cr.P.C. 1973, s.51

¹¹⁴ Ibid Sub- Sec. (2) of Sec 51

¹¹⁵Sec.100(3) Cr.P.C. reads:” Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made. Such person may be searched and if such person is a woman, the search shall be made by other women with strict regard to decency”.

In all passages, the phrase "with strict regard to decency" implied that not only should a woman conduct a search of another woman, but also that no male person should be present. However, the Supreme Court has stated that a search¹¹⁶ "should not be necessarily be illegal nor such evidence be inadmissible" when a male person witnesses anything being taken from the person of a women searched from a distance.¹¹⁷

4) Medical examination of accused women

“The examination of the arrested individual by a medical professional is covered under Sections 53 and 54 of the Criminal Procedure Code”¹¹⁸. The purpose of Section 53 of the legislation is to close the loophole in the previous legislation that prevented subjecting an arrested individual to a medical examination without their consent.¹¹⁹

In this way, Section 53 of the Criminal Procedure Code¹²⁰ “requires the person who has been arrested to submit to a medical examination at the request of the police to aid in the investigation”, while Section 54 of the Criminal Procedure Code¹²¹ “gives the person who has been arrested the right to have a medical examination to prove his or her innocence or demonstrate that they were injured while in police custody.”

When a female is the subject of the examination, only a female registered medical officer may do the examination, or she may do so under her supervision, by the amending Act of 2005, Section 54 received a new subsection (2).¹²² The purpose of this modification is to require that the registered medical practitioner give the individual who has been arrested to give a duplicate of the original report of examination or the candidate proposed by the cited arrested person

¹¹⁶Motilal v. State (1958) 24 Cut.L.J.445 (447).

¹¹⁷Kamalabai v. State of Maharashtra AIR 1962 SC 1189 Para 3

¹¹⁸Cr.P.C. 1973, s. 53 and 54

¹¹⁹ Notes on clause on the Bill of 1970, Ref. in Basu, D.D., *Criminal Procedure code, 1973* (1979) Dum Dum Park, Calcutta, p.238

¹²⁰Ibid s.53

¹²¹Ibid s.54

¹²²Cr.P.C. 1973, s. 53 (2)

5) Examination of women who has witnesses

A police officer has the authority under the Criminal Procedure Code to summon anyone to appear before him for the purpose of an inquiry. Section 160(1) of the Criminal Procedure Code¹²³With relation to questioning female witnesses, the police officer is required under this section's proviso. That is to say, a woman shouldn't be called to the police station anytime she has to be interviewed for a witness role in a case.

It is clear that the Cr. P.C. has little provisions for the accused women's protection. The 2005 changes, which clearly stated that women should not be detained after dusk and before dawn, granted women protection at the time of arrest. The form of arrest was not addressed in the most recent changes, though. According to Section 46(1), the arresting police officer must physically touch or restrain the suspect's body. Even ladies are covered, allowing male cops a chance to act inappropriately towards them when apprehending him.

When women are held in a police cell or on remand, for example, no special preparations are made. The police officers' sexist behaviour is a result of this gap in the Code. The police often summoned the ladies and mistreated them.

6) Police remand

When absolutely necessary, the police should request custody of a woman who has been arrested and placed in detention. A Gazette Police Officer must be satisfied with the justifications and preparations made for the arrestee's safety prior to making any such request. Wherever possible, women police should be executed to deal with women accused, particularly to conduct searches on them, accompany them to jail, and keep an eye on them while they are detained.

7) Detention in police lockup

If an arrested woman must be held in police custody for legitimate reasons, it is important to make sure she is placed under segregated section for women prisoners. And under given

¹²³Cr.P.C. 1973, s. 160 (1)

circumstances if segregated section is not available for female prisoners, she must be kept under in separate but not at any cost in men section of jail. Further to ensure authenticity and better protection for women, some nearby relative of female prisoner should be permit to remain present in police station. The services of a local female should be requested, and if required, she should be compensated, if neither a male nor female relative is available.

During the trial

Criminal cases must travel a long road of inquiry, investigation, trial, etc. Unfortunately, the Cr.P.C. is silent on giving protection to women detainees in judicial custody, save in limited circumstances.

1)Bail

If an accused person is willing to pay bail for a crime that isailable, they are automatically entitled to bail. “The arrestee may be released on execution of a bond without sureties for his or her presence if the police officer and court determine that the individual is impoverished and unable to provide surety.”¹²⁴ According to additional clarification, the inability to post bond within a week of the arrest date than thehe officer or the court can conclude that the subject is an impoverished person.¹²⁵

As a result of section 436(1)'s amendment, it is now mandatory for the court to release an arrested person on the execution of a bond without sureties if they are charged with aailable offence and are poor and unable to provide surety. This prevents someone who is accused of a crime from being held in jail because they are unable to provide bail.¹²⁶

However, in cases of non-ailable offences, the official in charge of the police station and the court have the discretion to distinguish among acts for which punishment may be given death penalty or life imprisonment.

“According to Section 437(1) of the Criminal Procedure Code of 1973”, “the accused cannot be released on bail if there is probable cause to believe that he committed an offence

¹²⁴Cr.P.C. 1973 s.436

¹²⁵ Inserted by the Code of Criminal Procedure (Amendment) Act, 2005 (25 of 2005), s.35

¹²⁶ Ibid

that carries a death or life sentence.” Though, the court may order the release on bail of any accused “who is under the age of sixteen, a woman, or who is ill or infirm, as long as it justifies its decision in writing.”¹²⁷

In order to ensure a fair trial, the judicial authority while taking any decision with regard to the bail the court will not refuse to grant bail if the person is not accused of any act for which punishment is death penalty or imprisonment for life.

“It is also evident that when an accused person is brought before a court magistrate and accused of an offence that carries a death sentence or a life sentence, he or she typically has no choice but to reject bail, subject, however, to the first proviso of Section 437(1) of the Criminal Procedure Code”¹²⁸ and in cases where the magistrate entertains a reasonable belief based on the evidence that the accused has not been guilty of such an offence. However, this will be a unique situation since there will be evidence at the time of the original arrest that might support an allegation or a strong suspicion that the individual in question committed the crime in question.

The accused is a woman¹²⁹ some high courts disagreed, holding that a female is permitted to be release on bond since the term "may" in the proviso implies "shall," making it mandatory¹³⁰. This proviso was added to Section 437 of the Criminal Procedure Code in consideration of the condition of women in India in order to prevent women from being held in custody as much as feasible. The judicial authorities are vested with the power to construe bail provisions very liberally when they are being applied to the female prisoner.

2) Sentence to death for a pregnant woman

If a person is given a death sentence by a Court of Session, the High Court must first approve the sentence before it may be carried out.¹³¹ The Session Court, issue a warrant to the Superintendent of the jail where the prisoner is being held once the High Court confirms the sentence so that it can be carried out. If a woman who has been given a death sentence

¹²⁷ Criminal procedure code 1973, First proviso to s. 437(1)

¹²⁸ Ibid

¹²⁹ Pramod Kumar v. Smt. Sadhana Rani, 1989 CriLJ. 1772

¹³⁰ Smt. Choki v. State of Rajasthan, AIR 1957 Raj 10

¹³¹ Criminal Procedure Code 1973, s.366

is discovered to be pregnant, the High Court must issue a stay of execution and may, if it sees appropriate, reduce the sentence to life in prison¹³².

3) Limiting the personal appearance of accused women in court

This is a well-established and fundamental concept of criminal law. However, in some circumstances, the court may waive the accused requirement to appear in person and instead allow them to do so through a pleader. The following are pertinent sections of the Criminal Procedure Code. Sections 205(1) and 273 of the Criminal Procedure Code¹³³ exempt an accused from appearing in person before the court.

A purdansahin woman must be excused from personal attendance in situations involving no moral turpitude, according to the Calcutta High Court's 1951 ruling¹³⁴.

There are hundreds of sections in the Criminal Procedure Code that deal with various facets of crime and the administration of justice. However, the protections that are developed specifically for women are so little that one could count them on one hand. Due to the poor state of women's custody rights, criminality against women in detention, particularly in police custody, began garnering public attention in the early 1980s.

4.4 The Prison Manual 2003

“All matters relating to prisons, reformatories, borstal institutions, and other institutions of a like nature, as well as the people detained there, as well as agreements with other States for the use of prisons and other institutions, fall under the purview of state governments, according to the State List provided in the Seventh Schedule of the Indian Constitution.”

Committees and Commission recommended changes here are a few of these:

- All India Jail Manual Committee, 1957
- Working Group on Prisons, 1972
- All India Prison Reforms Committee, 1980-83 (Mulla Committee)

¹³²Criminal Procedure Code 1973, s. 413

¹³³Criminal Procedure Code 1973, s. 205(1) and 273

¹³⁴Rajyalakshmi v. State (1951) 46 C.W.N.221

- All India Group on Prison Administration, Security and Discipline, 1986 (R. K. Kapoor Committee)
- National Expert Committee on Women Prisoners, 1987 (Justice Krishna Iyer Committee)”

A report with 658 recommendations, including 35 specifically for women in prison, was submitted by the committee, which Justice A. N. Mulla served as chair of, in 1983. These include housing female inmates in exclusive, distinct facilities or annexes, employing exclusively female staff in women's prisons, and providing women with prolonged probation.¹³⁵

“The R. K. Kapoor Committee, also known as the All India Group on Prison Administration, Security, and Discipline,” was established in July 1986 to review and examine various aspects of prison management and administration, particularly in relation to security and discipline, and to recommend improvements.¹³⁶

Later, in 1987, the National Expert Committee on Women Prisoners, led by Justice Krishna Iyer, assessed the status of women in prisons and issued a number of suggestions. These are some of the crucial suggestions:

- Inmates who are female should be made aware of their legal rights.
- Women inmates should only be searched by female constables.
- As soon as they are admitted to jail, female convicts should get a medical examination performed by female doctors.
- Women in jail should be given the opportunity to connect with family members, attorneys, social workers, and charitable organizations.
- Children should be permitted to stay with female convicts.
- There should be separate prisons for women.

¹³⁵FeinmanClarice, *Women in the Criminal Justice Systems* (Prager Special StudiesNew York 1986)

¹³⁶A.K. Avasthi, ‘Police Atrocities, Custodial Violence Plight of Prisoners and Human Rights’(Law Review, Vol. 21& 2 2001) p. 15

- The case of female inmates should be presented by special prosecutors when needed.

The All-India Model Prison Committee, led by Director General BPR&D, was established by the Government of India on the Hon'ble Supreme Court's instruction in order to create a Model Prison Manual. To improve the supervision and management of prisons, the Model Prison Manual was produced and distributed to all state governments and UT administrations in December 2003 for acceptance. But as time went on, it became clear that the Manual needed to be updated in order to remain relevant.

4.5 The Prison Manual 2016

The updated 2016 Model Prison Manual's main features include a emphasis on prison computerization, requirements for female inmates, rights of those who have been given the death penalty, repatriation of foreign detainees, and enhanced attention to prison correctional staff. This is to ensure basic uniformity in prison rules and regulations. Additionally, in 2007, a National Policy on Prison Reforms and Correctional Administration was created, which provided certain directions pertinent to women convicts. Upholding the human rights of inmates, avoiding overstaying preliminary hearings, etc. "Women prisoners shall be protected against all exploitation," it adds. Work and treatment plans must be created for them in accordance with their unique requirements. Every state is required to have a manual outlining the rights and responsibilities of convicts, which must be given to new detainees upon their entrance to the facility. In the jail, the same list must be shown and explained to the prisoner in a language she can comprehend.

One guard should be present for every six inmates, according to the NPM. Additionally, other professionals are supposed to be present in every jail to guarantee the institution's smooth operation. There were 4,391 female correctional employees as of 2015, which represents only 8.28% of the total.¹³⁷ Female officers at the supervisory level are in short supply. To oversee women's prisons, employees, and inmates in the state, "the National Prison Manual recommends the appointment of a single female DIG who is affiliated to

¹³⁷Austin McCromic, 'The Prison Role in Crime Prevention'(Jr. of Criminology & Police Law Vol. XLI 1950) p. 43

the prison headquarters. There is a severe staffing deficit in practically every jail in the nation. A rising number of things are required, including specialized female jail guards, full-time female physicians, and pediatricians”¹³⁸. Because there are very less number of female employees, so men employees have to look after the women prisoners in such situations. Gender-specific services are required due to the presence of female convicts, and they should be delivered by female employee. “In 2015, the nationwide average occupancy was 114.4%. “Prison overcrowding has been observed in states/UTs like Dadra and Nagar Haveli, Chhattisgarh, and Delhi with rates of as high as 276.7%, 233.9%, and 226.9%, respectively”¹³⁹When it comes to women, the impacts of overcrowding are sometimes much more obvious because they are typically segregated into a smaller area of the jail owing to a lack of enough facilities for them.”¹⁴⁰ So, basic cleaning and hygiene amenities are very poor in jails. One lavatory and one shower cubicle should be provided for every ten convicts, according to the Prison Manual. “The right to health involves the provision of affordable, appropriate, and high-quality healthcare.”¹⁴¹ Every jail is required by the National jail Manual to provide a hospital with separate wards for men and women. Additionally, it mandates thorough health screenings for female convicts, including exams to check for the presence of blood- or sexually-transmitted infections, mental health issues, drug use, etc. At the moment of entry, all inmates must receive a vaccination. Prisoners who are old or who have drug addictions require special attention.”¹⁴². In 2015,¹⁴³ 51 fatalities of female convicts were recorded overall.

If no alternative arrangements can be made for their care, mothers with children under six are permitted to live in jail with them. This upper age restriction differs across States. As of the most recent report, 1,866 children are being raised by a total of 1,597 female

¹³⁸Lina Gonsalves, *Women and Human Rights* (A.PH. Corporation New Delhi 2001) 429

¹³⁹Ibid 435

¹⁴⁰Prison Statistics India 2015 <https://ncrb.gov.in/sites/default/files/PSI-2015-%2018-11-2016_0.pdf> accessed June 2023

¹⁴¹Model Prison Manual 2016 <<https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>> accessed 1 June 2023

¹⁴² Model Prison Manual 2016 <<https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>> accessed 1 June 2023

¹⁴³Jail Reforms in India: A Study of Indian jail reform committees 1 (3) (International Journal of Multidisciplinary Education and Research 2016) <<https://www.multidisciplinaryjournals.in/assets/archives/2016/vol1issue3/1-3-35.1.pdf>> accessed 1 June 2023

prisoners.¹⁴⁴ Children in jail are legally entitled to food, shelter, medical treatment, clothes, education, and recreational opportunities, according to rules published in 2006¹⁴⁵ by the Hon. Supreme Court.

The most recent and current document relevant to the penal architecture of our nation is the National Model Prison Manual 2016 (NMPM). It outlines certain fundamental minimum criteria for the care and wellbeing of prisoners and is required to be adopted as a minimum standard by all States. These federal requirements should be adhered to precisely in all local jails, according to the prison manuals of each state. The Ministry of Home Affairs and States were ordered to work towards implementing the National Model Prison Manual by the Honourable Supreme Court in May 2017.¹⁴⁶ Following orders have reaffirmed this, the existing practice of considering adherence to jail guides voluntary should end.

¹⁴⁴ K. Jaishankar (ed), *Indian Prisons Towards reformation, rehabilitation and re-socialization*(1st Ed, Atlantic Publishers 2014)

¹⁴⁵ Prisons in India, An overview of Reforms and Current Situation <www.rajprisons.nic.in> accessed June 2023

¹⁴⁶ Protecting Prisoner (*The Hindu* dated 6 July 2017) < <https://www.thehindu.com/opinion/op-ed/protecting-prisoners-rights/article34956690.ece> > accessed 3 June 2023

Chapter 5

Judicial Approach on Women Prisoners in India

According to the legislation passed by the legislature, justice is administered. Some of these legal measures have developed over time thanks to the work of the judiciary. All such legislative provisions designed for the protection of women in various custodies - police, judicial, jail, social welfare, and mental health - are examined in earlier chapters. The Supreme Court has made an incredible effort to close the gap between the law and justice by providing a fresh interpretation of the law that complies with the norms of human rights as stated in numerous texts.

This chapter discusses the judgments handed down on various problems pertaining to inmates in an effort to demonstrate the higher judiciary's attempts to defend the rights and dignity of prisoners in general and of women prisoners in particular. To make the presentation more concentrated, it should be mentioned that only significant land-mark examples are covered. This chapter places a focus on issues mostly affecting female convicts.

It is generally acknowledged that the judiciary has recently given custody justice a significant degree of attention. While previous judicial orders concentrated on the circumstances of jails and prisoners, more modern judicial action has been drawn to social welfare, mental health, and police correctional institutions. The Expert Committee believed that "executive inaction and disproportionate response of the legislature" was what prompted the courts to address these issues. In order to prevent and end custodial abuses and malpractices and to defend the rights and position of convicted and undertrial inmates, particularly women in police or protective custody and children in welfare care, the court's constitutional power of intervention has been used.¹⁴⁷

¹⁴⁷ Report of National Expert Committee on Women Prisoners (1986-87)p.111
< <https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/PrisonAdmin17072009.pdf> > accessed 3 June 2023

5.1 Sheela Barse vs. state of Maharashtra¹⁴⁸

Facts:

Sheela Barse Concerned by the mistreatment of Indian women inmates, he said that of the 15 women she spoke with in the Bombay Central Jail, five of them filed complaints about the abuse and brutality the police officer rendered out to them. The apex court regarded her letter as a writ petition under Article 32 of the Indian Constitution.

After speaking with the female inmates, the director came to the conclusion in her report that all of the allegations in the writ petition were true, with the exception that there is no system in place to support female inmates' legal rights. Additionally, two foreign countries claimed the lawyer defrauded them by taking the majority of their money while claiming to be collecting fees.

Issues:

Whether the poor treatment meted out to female prisoners is justifiable or not?

If the prisoner's ill treatment is a violation of his rights granted under article 21 of the india constitution?

Whether it is the responsibility of the state authorities to offer the prisoners legal representation or not?

Judgment:

The court found that under Articles 14, 19, and 39A of the constitution, indigent persons who are arrested must be provided with a legal counsel. If there are any instances of mistreatment of female inmates in jail, the social worker was required by the court to produce a report on it. A legal assistance agency must be established at the high court and district court levels, according to a directive from the Supreme Court sent to the inspector of prison.

¹⁴⁸ AIR 1983 SC 378

The court also ordered that an order be placed on the inspector general of the Maharashtra jail regarding the prisoners and that a notification be sent to all Maharashtra superintendents for the purpose of ending a list of all the prisoners and the crimes they have committed, with the male and female details specified separately. The police officer was also instructed in the notice to establish a list of the convicts' appointed solicitors. The purpose of doing this is to inform the detainee of their legal counsel options and rights. Access to facilities is necessary for the attorney to meet with the inmates.

Last but not least, the court made recommendations to enhance the safety of female convicts. First, female police officers should be the sole ones responsible for monitoring the female convicts' separate confinement. The guideline should also state that female inmates should only be questioned by police officers who are themselves female. Additionally, almost everyone should be informed of the basis for their arrest and the possibility of bail. Only a female supplied under section 160(1) of cr.p.c may investigate a suspect who is a female. Last but most crucially, the suggestions said that women inmates should not be taken into custody at night or early in the morning.

5.2 State of Maharashtra v. C.C.W. Council of India¹⁴⁹

Facts:

In a case involving abuse in custody and the detention of women, the Bombay High Court The State of Maharashtra is instructed to establish a committee made up of its Home Secretary, Law Secretary, and Director General of Police within 15 days of today to investigate all aspects of police-inflicted custodial violence in the State and to propose extensive measures and guidelines to prevent and check custodial violence and death. The committee is also instructed to recommend appropriate amendments to the State's Police Manual for that purpose, as well as to submit an extensive report

Within three months after its formation, the aforementioned committee is mandated to deliver its report to the State Government. The State Government is tasked with taking decisive action to put the recommendations made by the committee for avoiding and

¹⁴⁹ 2004 CriLJ 14 (SC)

limiting the custodial. Within three months after its formation, the aforementioned committee is mandated to deliver its report to the State Government. Immediately following the committee's report's submission, the State Government is obligated to take decisive action to put the recommendations for preventing and controlling custodial violence into practice

The State Government is required to give all appropriate police officers in the State the urgent orders they need to ensure that every detainee is medically evaluated after being arrested and before being transferred to the Magistrate, and that the contents of that examination are included in the detainee's medical report.

The State Government should also give orders to all relevant police officials in the State requiring that every third day, even after a police remand has been ordered by the concerned Magistrate for any duration, the detainee undergo a medical examination and that such reports be recorded in the Station House Diary;

The State Government is also instructed to install a complaint box that is properly locked in each police cell, and the official in charge of the police station is to keep the keys to the complaint box. If the detainee requests paper and a pen to write complaints, the officer in charge of the concerned police station is required to give it to him. The officer in charge of the concerned police station is also required to open the complaint box each morning. If a complaint is discovered in the complaint box, the officer-in-charge of the police station is required to take the complaining detainee and his complaint right away to the concerned Magistrate.

The State Government should immediately give instructions to all parties involved stating clearly and unequivocally that no woman shall serve as a constable and under no circumstances between sundown and daybreak. The State Government needs to provide enough accommodations for female inmates in separate jails.

The Bombay High Court's orders were challenged by the Maharashtra government in an appeal.

Judgment:

State of Maharashtra v. C.C.W. Council of India observed the aforementioned High Court order forbidding the arrest of a woman with a got observed the aforementioned High Court order banning the arrest of a woman in the presence of a female constable, as well as at any time between dusk and dawn. While acknowledging the purpose of the Bombay High Court's¹⁵⁰ directives, the Supreme Court expressed concern that strict adherence to those directives under the current circumstances would be problematic for the investigating agency and might even allow dishonest defendants to evade the legal system. The Supreme Court further stated that "the object will be served if a directive is issued to the Arresting Authority that while arresting a female person, all efforts should be made to keep a lady constable present, but in circumstances where the Arresting Officer is reasonably satisfied that such presence of a lady constable is not available or possible and/or the delay in arresting caused by securing the presence of a lady constable would impede the course of investigation even without a lady policeman present, depending on the circumstances of the situation.

The rights of women have been diminished as a result of this latest Supreme Court decision. Since then, the Cr. P.C. has been changed to make it illegal to arrest women before or after sunset. In a letter to the Chief Justice of India in 1997, the Executive Chairmen of the Legal Aid Services of West Bengal drew his attention to a number of custodial violence-related news articles that had been published in various publications. According to Article 32 of the Constitution, the letter was considered as a writ application, and the case¹⁵¹ was treated as a public interest lawsuit.

The Law Commission of India and all State Governments received notice from the Supreme Court requesting that they submit affidavits outlining the procedures that would be done to stop and deter custodial assault by law enforcement agents. The Supreme Court has issued the following guidelines after considering these affidavits and hearing everyone's arguments:

¹⁵⁰ CI(vii) of operative part of its judgement

¹⁵¹ D.K. Basu v. State of West Bengal AIR 1997 SC 610

- The police officers involved in the arrest and conducting the arrestee's interrogation should wear precise, obvious, and clear identification and name tags with their designations. A register must be filled up with the information of every police officer who handles the arrestee's questioning.
- Unless he is the attesting witness of the memo of arrest, a person who has been arrested or detained and is being held in custody in a police station, interrogation centre, or other lock-up shall be entitled to have one friend or relative, or other person known to him or having interest in his welfare, informed, as soon as practicable, that he has been arrested and is being detained at the specific place.
- As soon as a person is placed under arrest or taken into custody, they must be informed of their right to have someone informed of their arrest or detention.
- At the location of detention, a note about the arrest of the person is required to be written in the diary. This note must also include the name of the person's next friend who has been told of the arrest as well as the names and contact information of the police officers who are now caring for the arrestee.
- A doctor from the panel of approved doctors chosen by the Director, Health Services of the relevant State or Union territory should examine the arrested person medically every 48 hours while they are being held in jail. Such a panel needs to be prepared by the Director of Health Services for all tehsils and districts as well.
- For his records, area Magistrate shall get copies of all papers, including the memo of arrest mentioned above.
- Although not throughout the questioning, the arrested person may be allowed to meet with his or her attorney.
- All district and state headquarters should have a police control room where information about the arrest and the location of the arrestee must be communicated by the arresting officer within 12 hours of the arrest and posted on a visible notice board in the police control room. The official in question may be subject to departmental action for failing to comply with the requirements listed above, but he may also be punished for contempt of court. Contempt of court proceedings may be brought before any High Court in the nation with jurisdiction over the matter.

5.3 Paramvir Singh Saini V. Baljit Singh & Ors¹⁵²

Facts:

In order to support human rights, some courts have made rulings ordering police departments to set up CCTV on their campuses. Police misconduct has caused some persons to pass away while they were in their care. To find out if police stations had security cameras installed, a special leave petition was submitted. Important information was omitted from the material provided to the SC, including the number of working cameras in police stations, the overall number of cameras installed, where they were located, and how they operated, among other things. A large number of states and territories have not submitted paperwork to be recognized as a Central Oversight Body (COB).

Issues:

How far along is the installation of surveillance cameras at police stations?

Does the state follow Cr.P.C Section 161(3)?

Judgement:

- The Supreme Court ordered that the State and district oversight committees be established, along with their responsibilities.
- Additionally, the SC was instructed to install CCTV cameras with night vision in each and every police station in the state and union territory. The cameras also needed to record audio and video. Every police station in the state should have CCTV cameras installed, according to legislators. To make sure that no area of the police headquarters is left exposed, CCTV cameras should be installed at all entry and exit points, the police headquarters main door, lock-ups, all passageways, meeting rooms, Inspector's room, Sub Inspector's room, areas outside the lock-up room, and the station corridor. According to their verdict, a bench ordered the Centre to "install CCTV cameras and recording equipment in the offices of" the CBI, NIA, and NCB.

¹⁵² SLP (Criminal) No. 3543 of 2020

- The data should be stored on the recording system for at least 18 months.
- Large posters in English, Hindi, and local languages should be prepared for both the outside and inside of police stations. People should be made aware by the banner that they are being watched by CCTV.
- The finance department of each state and union territory shall allocate the appropriate cash. Additionally, it was mandated that incidents involving custodial deaths be reported to both the State Human Rights Commission and the human rights commissions that had to be established in each district of each state and union territory.¹⁵³

5.4 DK Basu vs the state of West Bengal¹⁵⁴

Facts:

On August 26, 1986, DK Basu, Executive Chairman of Legal Aid Services, West Bengal, a non-political organization, wrote to the Supreme Court of India to draw his attention to several news articles regarding death in police custody and detention that had been published in the Telegraph Newspaper. He asked that the letter be handled as a Writ Petition under the "Public Interest Litigation". The Defendants were informed and the letter was handled as a written Petition because to the significance of the matters stated. Mahesh Bihari from Pilkhana, Aligarh died in police custody, and Mr. Ashok Kumar Johri wrote to the Chief Justice of the Supreme Court to draw his attention to this while the writ case was being heard. The identical letter was submitted with D.K. Basu's request for writing under the same circumstances. On August 14, 1987, the Court issued an order directing letters to be sent to all state governments, as well as to the Law Commission, asking it to provide suitable ideas within two months. Several states, including West Bengal, Orissa, Assam, Himachal Pradesh, Haryana, Tamil Nadu, Meghalaya, Maharashtra, and Manipur, submitted affidavits in response to the announcement. In order to help the Court, Dr. A.M.

¹⁵³Paramvir Singh vs Baljit Singh (2020) <<https://lawbhoomi.com/case-analysis-paramvir-singh-vs-baljit-singh-2020/>> accessed 3 June 2023

¹⁵⁴D.K. Basu v. State of West Bengal 1997 CriLJ 743

Singhvi, Principal Counsel, was designated Amicus Curiae. All of the lawyers who seemed to be able to help the court out

Issues:

Instances of police killings and torture in detention are on the rise.

The police are arbitrary arresting of a person.

Is it necessary to define any rules in order to make an arrest?

Court held:

In addition to the constitutional and statutory safeguards, the court established a set of 11 rules that must be observed in every arrest and detention situation.

- Police officers must wear specific, obvious, and clear identification, as well as identifying labels with their designations, when making an arrest and handling the arrestee's questioning. A registry must contain information on every employee who handled the interrogation of the detained individual.
- That the police officer arresting the detainee will write up a memo of arrest at the time of the arrest, and that memo will be witnessed by at least one witness, who may be a family member of the arrested person or a reputable local citizen. The document must also have the detainee's signature and the time and date of the arrest.
- The right to have a friend, relative, or other person known to him or who has an interest in his well-being informed that he or they have been arrested and are being detained in a particular place shall apply to any person who has been arrested or detained and is detained at a police station, interrogation centre, or other confinement, unless the witness crediting the arrest memorandum is himself a friend or relative of those arrested.
- The District's Legal Aid Organization and the station are required to inform the detainee's next friend or relative who lives outside the district or city of the

detainee's time, site of detention, and place of custody where he is being held. Within eight to twelve hours of the arrest, the police in the affected region should be telegraphically notified.

- Every 48 hours while in detention, the detainee must go through a medical examination by a qualified doctor who is appointed to the list of recognized doctors by the Director of Health Services of the relevant State or Union Territory.
- The Magistrate must receive copies of all paperwork, including the arrest memo, in order to register.
- The Arrestee may be permitted to meet with his counsel during the questioning, but not for the duration of the questioning.
- “At all central district and state offices, a police control room must be available, where the arresting officer must give information about the arrest and the person being held there within 12 hours of the arrest. This information must also be posted on a visible notice board in the police control room.”¹⁵⁵

5.5 In Nilabati Behera(Smt.) v. state of Orissa¹⁵⁶

Facts: Suman Behera was reportedly kept at the police outpost after being taken into custody at 8 a.m. on December 1, 1987, for a theft inquiry that he was not released from custody when he was found dead the next day on a railway track close to Police Outpost Jeraikela. Suman Behera died too soon as a result of several wounds. In the current instance, Smt. Nilabati Behera wrote to the Supreme Court stating that her son Suman Behera, age 22, had passed away in police custody after suffering several injuries. The son of the petitioner managed to escape from police custody at approximately three in the morning on December 2, 1987, according to the respondents, who stated that he was murdered after being struck by a train. There is no solid independent proof of any search the police conducted to find the petitioner's son, even if he did escape from their custody as alleged in his defense. According to Article 32 of the Indian Constitution, the honourable

¹⁵⁵D.K Basuvs The State of West Bengal (1996)<<https://www.lawjure.com/case-summary-d-k-basu-vs-the-state-of-west-bengal/>> accessed June 2023

¹⁵⁶ AIR 1993 SC 1960

court took a suo moto action that was later transformed into a writ petition. According to the petitioner, her son's fundamental right to life, which is protected by Article 21, was violated. Therefore, it is obvious that it is the respondents' responsibility to provide an explanation for how Suman Behera received the wounds that led to his demise.

Issues:

If the Indian constitutional courts, acting in accordance with Articles 32 and 226 of the Indian constitution, award monetary damages for the violation of basic rights, this raises the issue of sovereign immunity.

Judgement:

- This Court directed the District Judge to conduct an investigation and provide a report on March 4, 1991. After hearing from the parties and weighing the evidence, the District Judge handed the Inquiry Report dated 4.9.1991 to the court.
- The District Judge found that the petitioner's child's death was caused by a number of wounds he received while being detained by police at the Police Post.
- The outcome of this case ensured that the state could no longer avoid culpability under public law and had to make restitution when it violated someone's fundamental rights and very basic human rights in such egregious ways.
- It is without debate that the State of Orissa is responsible for paying the compensation in this instance, and the learned Additional Solicitor General did not contest this fact.
- However, it would be necessary to explicitly state the basis for the State's need to pay damages in these circumstances as well as the differences between this obligation and the private law obligation to pay damages in a tort action.
- The respondent, the State of Orissa, was ordered by the Supreme Court to pay Mrs. Nilabati Behera a sum of Rs. 1,50,000 as well as Rs. 10,000 to the Supreme Court Legal Aid Committee.

5.6 R.D.Upadhyay Vs State of A.P¹⁵⁷

The Hon'ble Court was informed that despite having no fault of their own, children of inmates who were awaiting trial were made to remain in jail with their mothers. It was discovered that this was the case due to their young age and the lack of a suitable house to care for them or watch over them in the absence of their moms without inciting prejudice. The correctional atmosphere was in no way up to par with the norms that should be followed while raising children. The setting was not at all hospitable to a child's development. In the Constitution of India, the best interest of a child has been a primary consideration. Article 15 prohibits the discrimination on the ground of place of birth among others. Sub-clause 3 of this Article provides that the State can make special provisions for women and children. Article 21A that was inserted by the 86th Constitutional Amendment states that there should be free and compulsory education to the children of ages six to fourteen.

Article 24 forbids the employment of children in risky occupations, while Article 14 guarantees equal protection under the law throughout the Indian subcontinent. Every citizen has the right to life and personal freedom under Article 21. The State is required by Article 39(e) to take steps to prevent the maltreatment of young children and the early pressure to engage in labor-intensive occupations. The State is required under this Article's Part (f) to provide facilities that are supportive of child development and that safeguard the young person's freedom and dignity.

Article 45 requires the State to provide early childhood education up until the age of six. According to Article 47, the State must put improving public health, raising living standards, and ensuring adequate nourishment as its top priorities. Along with the National Policy for Children, which was approved in 1974, there are several more laws for bettering child development. This policy said that it was the responsibility of the State to make sure that children had enough assistance for their entire physical, social, and mental development before, after, and during the phases of growth.

¹⁵⁷ AIR 2006 SC 2061

Issues:

Creating a sufficient number of inferior courts and supplying the necessary infrastructure

Directions for the kids of women inmates who are being tried or sentenced within the prison, if necessary

Judgement

With this judgement, the Supreme Court mandated a variety of criteria be implemented in jails across the nation, relying on both the Directive Principles and the Fundamental Rights in the Constitution. Prisoners' rights were acknowledged by the Supreme Court. The court considered the suffering of mothers' children, who develop alongside them. The provision of food, shelter, medical attention, education, and other necessities for the children was also mandated.

The Court took note of the following particular regulations for female inmates and children:

- A kid who is in custody with his or her mother must not be viewed as a defendant or a criminal.
- The authorities must make sure that a jail offers the bare minimum in terms of child birth facilities before they put a pregnant woman there.
- Births in jail must be reported to the local birth registration office when they happen, but the fact that the child was born there must not be noted on the birth certificate.
- Children under the age of six may stay with female inmates while they are still in custody.
- All of a child's fundamental requirements, including clothes, food, shelter, and medical attention, must be met.
- There must be facilities for children's education and entertainment.
- The youngsters will be cared for in a nursery that is connected to the jail for women.
- The kids shouldn't be held in sub-jails unless there are enough facilities available.
- The kids shouldn't be housed in cramped quarters with women who have been convicted of crimes of all kinds, are awaiting trial, and offenders.

- Schemes and rules pertaining to their care and development must be carried out in word and spirit. The Court also ordered that criminal prosecutions for women inmates whose children are detained be concluded as quickly as possible¹⁵⁸

¹⁵⁸KanhaiyaSinghal, Case Analysis R.D. Upadhyay(*Scribd*18 May 2006)
<<https://www.scribd.com/document/514485264/Case-Analysis-R-D-Upadhyay#wq>> accessed 3 June 2023

Chapter 6

Conclusion and Suggestions

6.1 Conclusion

Through this study, we have learned that there exist laws relevant to women prisoners both nationally and globally; yet, majority of women who are convicted are illiterate and unaware of their legal rights and remedies. It is true that the treatment of women convicts is awful. Inside the jail, both the basic right and human rights must be upheld. She cannot be denied her fundamental rights only because she is incarcerated. Her conviction has put her life in jail already at a disadvantage. It is true that women inmates are not provided with adequate amenities within the jail, which is against their constitutional rights and deprives them of basic requirements like food, clothing, and shelter.

Although several laws have been passed, they have not always been properly enforced by the jail administration. The laws that were passed for the benefit of women convicts have not yet been fully implemented. It is true that under Article 15(3) of the Indian Constitution, female inmates require particular protection and care. When a woman is pregnant, has just given birth, is suffering postpartum problems, or is going through menopause, she needs extra protection. She also need extra care because of her biological characteristics and increased sensitivity compared to men.

It is accurate to say that compared to recent decades, the number of women behind bars has increased owing to modernization, urbanization, globalization, economic marketization, and liberalization. And in the guise of empowerment, women take part in all occupations; including committing crimes. Some women would rather commit the crime in order to satisfy their wants. Some ladies become victim to those who use on the innocence of these rural, defenseless women.

The relevant authorities occasionally fail to comply with the Supreme Court's directives. Most of the women who have been charged with murder have relocated from rural regions. Additionally, the bulk of them lack literacy and are unaware of the consequences of the crimes they have committed. There are no successful reformative and rehabilitation

initiatives for women in detention. The jail administration does not give the inmates awaiting trial any clothes or additional facilities. There are no after-care schemes for female convicts being run by the State. The Supreme Court has been successful in instilling a sense of accountability in the government and placing responsibility on those who work directly with detained women. Conclusion stated above demonstrates clear lack of political will for reform.

Effective treatment must include crucial elements including adequate preparation prior to release, precautions against jail readmission, halfway house support networks for women without family support, and treatment continuation after release. In order to empower women and minimize recidivism and poor mental health outcomes, life skills training, supporting additional study in jail, and health education are also essential. Being confined behind the four walls of a jail is distressing enough. It is crucial to maintain and improve the mental health of female convicts so that their time behind bars does not negatively impact their life.

Despite all these laws, the interests of inmates who are women are not specifically protected. The only rights that apply to the accused ladies are universal ones. Due to their unique gender status, female inmates require specific care, which the Constitution's founders completely disregarded.

There are hundreds of sections in the Criminal Procedure Code that deal with various facets of crime and the administration of justice. However, there are so few protections developed just for women that one could count them on one hand. As a result, criminality against women in detention, particularly in police custody, is a long cry from the custodial justice for women. In the early 1980s, it began attracting the public's attention.

The fundamental goal of the Prison Act of 1894 was to punish the offender. It suffers from lacking elements for reformation and rehabilitation. Furthermore, this Act rarely has any safeguards to protect the rights of inmates who are women. In order to achieve custodial justice, the Act should be appropriately changed to protect the interests of female convicts, especially in terms of reformative and rehabilitative elements.

The Supreme Court has been successful in promoting a sense of accountability in the government and placing responsibility on those who work directly with detained women. Custodial offences decreased in frequency, yet they were not entirely eradicated. No detainees at State prisons for Women complained about violence being committed against them or the way they were being treated.

Women in jail need to feel protected, get respect and dignity, and receive assistance in understanding their criminal behaviour. Implementing the Supreme Court's directives addressing pregnant women inmates' needs for support, antenatal, natal, and postnatal care, free legal representation, swift trials, safety in police and judicial custody and care of children of female convicts must be done expeditiously in accordance with the rules.

6.2 Suggestions

1) Medical facilities for women prisoners:

- It is important to assess the number of physicians sanctioned for prisons and make sure that both inmates and prison employees have access to proper medical services.
- To address the unique needs of female convicts, arrangements must be established. When treating female detainees, there must always be at least one female medical officer on duty.
- To address the unique needs of female convicts, arrangements must be established. When treating female detainees, there must always be at least one female medical officer on duty.
- The jail administration should have access to adequate medical infrastructure, such as fully prepared ambulances, stretchers, clinics, hospital beds, etc.
- It should be made possible to offer psychiatric counseling to people who have persistent depression, especially female convicts. In each central, district, and sub jail, the state should provide a position for a psychiatrist.
- A chart or brochure should be used to make inmates aware of the well established system of duties of the prison personnel in the event of a medical emergency.

2) Guidelines Particular to Women in Custody

According to the rules, the Supreme Court's directives respecting women detainees must be followed. Another recommendation is:

- Respect for women's privacy and dignity must be given high emphasis.
- A female doctor and guards in charge of the female prison grounds must be present within the facility.
- Physical and mental health issues in female convicts must be consistently checked for, and treated as soon as possible for.
- A crucial element to the wellbeing of female inmates is the participation of family members in counseling
- Women inmates with drug use disorders should have access to a de-addiction facility.
- Self-help groups for female inmates may be very beneficial at stressful times, such as when they first enter jail, while on bail, when getting ready for court appearances, when bad things happen at home, such as family member passing away, and before, during, and after verdict.
- It is necessary to provide kids enough opportunity to work and remain active. It is crucial to make adequate preparations for life following release, especially for women without family support.
- Meeting with convicts frequently will assist in quickly identifying their issues, provide solutions, and lessen their pain. Prison staff members must get training in mental illness recognition and crisis response methods.
- In order to empower women and minimise recidivism and poor mental health outcomes, life skills training, supporting additional study in jail, and health education are also essential

3) Division of prisoners:

- Prisoners should be categorized according to their crimes, age, education, whether they are repeat offenders or first-time offenders, and whether they have been found guilty or not. According to the recommendations made in the Justice Mulla Committee Report, it should be done.

4) Training

- All levels of prison administration must plan recurring training programmes and refresher courses.
- All state governments should set up training facilities specifically for the initial and ongoing training of jail employees.

5) Prison Staff

- The majority of jails experience a labour shortage. The State Governments should regularly examine the needs for various staff categories, particularly medical professionals, and take action to address the shortage.
- Due to a lack of advancement prospects, there is a significant amount of stagnation among various ranks in the jail department. The governments should conduct a review of the cadre and introduce more work-based advancement possibilities for various grades.
- To achieve gender parity and sensitivity within the institution, a deliberate policy to introduce more women into jail management is required.
- After comparing the job duties of the chosen positions in the two departments, the State Government may decide to equalise the pay scales for lower ranks in the jail and police departments.

Legal Aid and Undertrials

- The Criminal Procedure Code should be amended to allow a prisoner who is awaiting trial to enter a guilty plea at any point in the proceeding.

- In addition to compoundable matters, Lok Adalats should also handle situations in which the accused enters a guilty plea. It is necessary to broaden the scope of Lok Adalat's activities in criminal matters.
- After implementing the required protections, the establishment of the plea-bargaining system may be explored.
- Drives for legal literacy should be started with the goal of educating the prison administration as well as the inmates about their rights and responsibilities.
- It is important to continue identifying people who require and merit legal assistance.
- Legal aid professionals must identify such convicts and inform them of their legal assistance rights.
- Legal aid personnel must assist in securing the release of defendants awaiting trial on bail and on personal recognisance.

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