

## CUSTODIAL RIGHTS OF WOMEN IN INDIA

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### ABSTRACT

*It isn't the demands for sex for me anymore. After twenty years in prison, it's about losing the last thing I have, my private body self. It's the male guards watching my naked body, openly, and as I get older the comments change to making fun of it, mocking me, my aging woman. It's the commonness of them calling us "hos" and bitches. It's being yelled at for needing more toilet paper, for asking for an extra sanitary napkin.*

*-G.W., witness, Everson v. MDOC*

DEEPLY ROOTED IN FEMINIST IDEOLOGY ARE TENSIONS between theories that exaggerate and those that minimize differences between females and males. Theories that exaggerate female-male differences often essentialize women, positing women as "other" to a male norm, whereas theories that minimize differences imply symmetry and equivalence between genders, often obscuring discrepancies in power and social value. Embedded within these arguments are the foundations of many legal doctrines and remedies. However, the tension between these theoretical constructs often has real world implications that demand more complicated solutions than this dichotomy allows.' One particularly poignant illustration of these tensions is current litigation that juxtaposes women's parity of opportunity for education and training with male claims of employment discrimination. However, the Feminist Studies context of this litigation-female prisons-further complicates and confounds issues of gender similarity and difference by adding a layer of state imposed control that often masks power differentials between women and men. Specifically, this article explores how the legal rights to "substantially equivalent" treatment and facilities for female prisoners were jeopardized in India by legislature and administrative Interpretators for achieving the goal of gender neutrality, thereby minimizing the gender differences the case sought to protect.

## INTRODUCTION

A life in prison is a life condemned. The very struggle for survival in a harsh, cruel world is even more for the one who carries the burden of womanhood and is plagued with trials and tribulations. In a male dominated, largely patriarchal social system, combined with issues of poverty, deprivation and the frustrations of existence, the vulnerability to victimization at home and in the society - may sometimes push a woman to commit an offense or adopt criminal behaviour, which is punishable by law. The punishment entails confinement, where the conditions of living are barely basic, but much worse is the loss of the right to live a life of dignity. Shunned by society, often ignored by relatives, contemptuously treated by authorities, these women live behind bars – lives withered, wasted and wrecked by worthlessness. Their pitiable state, their morose demeanour, the constant worries about their children and family, the uncertainties of punishment or otherwise, sap their energies and almost make them bitter. There are moments of anguish, visible shades of remorse, but never a trace of excitement, enthusiasm or expectation. The disquieting effects and the consequences of imprisonment – from dealing with the deviant act itself at the mental and social levels, to the uncertainty or certainty of punishment, the incessant worries about the plight of her children and family left behind, and the stigma she will now carry - are some of the issues that confront a woman when she finds herself in detention

women in prisons are frequently victims of physical and sexual abuse, United Nations on Human Rights *Rule 53 of the Standard Minimum Rules for the Treatment of Prisoners* states that women prisoners must only be guarded by female officers (United Nations, 1955). At times, male staff does not hesitate to do frisk search on female prisoners. There are instances when prison staff have endorsed and supported bullying and verbal abuse of women prisoners, if they do not listen to them (Human Rights Watch 1996).

As the topic of the paper suggests, it aims to provide an insight into the lives of women under police custody or behind impenetrable walls – who are ordinary human beings but deviants, whose rights are to be protected and looked upon which the changing scenario where reformation is necessary, they need to be protected against custodial torture and violence and to be treated with compassion.

## International Mandates Relating To Custodial Right Of Women.

Women prisoners are found to suffer from a variety of health problems in the custodial environment. A recent study on women prisoners in the UK reported that imprisonment impacted their health negatively. The initial shock of imprisonment, separation from families and enforced living with other women suffering drug withdrawal and serious mental health problems affects their own mental health. Over the longer term, women complained of detention in unhygienic facilities by regimes that operated to dis-empower them, even in terms of management of their own health. Women described responses to imprisonment that were also health negating such as increased smoking, eating poorly and seeking psychotropic medication. The study avers that there is little evidence that the UK policy initiatives have been effective in addressing the health needs of women prisoners. According to the fact sheet of Amnesty International on women in prison, women are denied essential medical resources and treatments, especially during pregnancy. There are studies which have reported high prevalence of syphilis among women prisoners as compared to general population. Women prisoners suffer menstrual disorders, stress, and depression.

### **Universal Declaration Of Human Rights, 1948**

The journey of the Human Rights in general starts with Universal Declaration of Human rights in the year 1948. The declaration grants equal rights to all human being irrespective of their caste , creed, sex, and nationality<sup>1</sup>

### **Covenant for the Protection of Human Rights and Fundamental Rights, 1950**

The concrete efforts to protect human rights of prisoners and under trial has been made through covenant in 1950. It provides for various basic human rights of the prisoners – right to live (article 2), prohibition of torture ( article 3), right to life and security ( article 5), right to fair trial ( article 6), presumed innocent until proven guilty ( article 6(2)), to have adequate time and facilities for the preparation of her defense ( article 6(3)(b)), right to defend himself and free legal – Aid ( article 6(3)(c)).

### **International covenant on civil and political rights, 1966**

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<sup>1</sup> Article 1 of UDHR, 1948

Article 10(1) of the covenant provides that person deprived of liberty should be treated with humanity and with respect for the inherent dignity of the human beings. Article 10(2)(a) provides for segregation of accused from convicted and for their proper treatment as un-convicted persons.

**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988**

**Principle 5**

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.
2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

**Standard Minimum Rules for the Treatment of Prisoners, 1955**

It was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

**Article 8 clause 1** states that different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

**Article 23** talks about the Medical services , it states that :

(1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

**Article 46 clause 3** talks about Institutional services, it states that:

To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

**Article 53 states as follow:**

(1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

**The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules')**

These rules were adopted by the UN General Assembly in December 2010 and they filled a long-standing lack of standards providing for the specific characteristics and needs of women offenders and prisoners. These rules supplement the Standard Minimum Rules for the Treatment of Prisoners, 1955. The Bangkok Rules also complement and supplement the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>6</sup> with a section covering the application of non-custodial sanctions and measures for women and juvenile female offenders, including on arrest and at pre-trial, sentencing and post-sentencing stages of the criminal justice process. The Bangkok rules will serve as a supplementary for the SMR in relation to women offenders and highlight the issues of:

- Vulnerability of women and their dependent children (best interests of dependent children);
- Pregnant women, breastfeeding mothers and mothers with children in prison;
- Personal hygiene for women prisoners such as sanitary towels, regular supply of water for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating;
- Medical confidentiality in relation to their reproductive health history and availability of Reproductive health for women prisoners;
- Gender-specific health-care services;
- HIV prevention, treatment, care, support and substance abuse treatment services and programmes;
- Preventive health-care measures and screening for breast and gynaecological cancer;
- Juvenile female prisoners;
- The gender-sensitive risk assessment and classification of prisoners;
- Foreign nationals;

## National Safeguards Relating To Rights of Women In Custody In India

**Constitution of India, 1950**

Constitution of India does not provide specific guarantee to the women prisoners. However, the Indian Constitution gives the status of equality to the women. Constitution of India under Article 14 provides equal protection of laws to the women in India and Article 15 prohibits the discrimination on grounds of sex. But still Indian women prisoners are facing a number of problems. Government of India passed the Protection of Human Rights Act, 1993 and constituted a body known as the National Human Rights Commission for promotion and protection of human rights. Part IV of the Constitution of India sets out the Directive Principles of State Policy which give direction to the State to provide economic and social rights to its people in specified manner. India has also ratified various International Conventions and Human Rights Instruments committing to secure equal rights of women.

Women prisoners have many rights. They cannot be debarred from their basic human rights and freedoms guaranteed by the Constitution of India. The Supreme Court in the case of *Sunil Batra vs Delhi Administration*<sup>2</sup> court process casts the convict into the prison system and the deprivation of his freedom is not a blind penitentiary affliction but a belighted institutionalisation geared to a social good.

The court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration. There are a number of rights of women prisoners which are provided by different committees appointed for prison reforms and also by United Nations. These rights must be incorporated in the Prison Act 1894. Since, Prisons is a State subject under Entry 4 of the State Subjects List of the Seventh Schedule to the Constitution of India. Hence, the management and administration of prisons come under the domain of the State Governments.

Article 39 A of the Constitution of India empowers the women prisoners to secure free legal aid. It provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. But the question arises whether the legal aid provided is sufficient. Every prisoner has the right to seek legal aid if needed. Just because a person has been sentenced to imprisonment doesn't mean his rights can be violated.

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<sup>2</sup> AIR 1980 SC 1579

Women prisoners have the right to speedy trial. There is an undoubted right of speedy trial of under trial prisoners, as held in a catena of cases of Supreme Court. The Supreme court of India in the case of Hussainara Khatoon (IV) vs Home Secretary, State of Bihar<sup>3</sup>

### **Recommendation by various Committees**

#### **a. Committee on Jail Reforms, 1983**

This committee known as mulla committee suggested that women's non-official organisation at the national level, be set up to look into the issues like revision of legislation in respect of women prisoners, establishment of homes for released women prisoners, action in cases of atrocities committed against women in prison, re-integration of ex- women prisoners into the family and community, free legal aid to women prisoner, welfare of women prisoner family.

#### **b. Justice Krishna Iyer Committee, 1988**

The committee headed by justice Krishna iyer submitted a report to the government of India in feb 1988. It recommended recruitment of more women in police force to handle the women and child offenders. The committee for formation of new rules and regulations for women prisoners, coordination between police, law and prison for providing justice to women prisoners, provisions of legal aid to women prisoners, construction of separate /more jails for women prisoners, protection of human rights of pregnant prisoners and their babies.

#### **c. Parliamentary Committee on Empowerment of Women, 1996**

Parliamentary committee on Empowerment of Women in its report on Women in Detention ahs also made recommendations for various concrete measures to be taken in India to protect Human Rights of women prisoners such as to establish minimum standard uniform practice to form NGO's to help in rehabilitation of women prisoners to provide parental care to the children of in-mates to ensure medical facilities

Rights Associated With Women In Custody.

### **A. Rights of Woman Suspect.**

#### **Constitution of India**

No under trial can be detained in prison for periods longer than the maximum term for which they would have been sentenced, if convicted and if so continued, it amounts to violation of their fundamental rights under Article 21.<sup>4</sup>

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<sup>3</sup> AIR 1979



### **Code Of Criminal procedure, 1973**

Though the code is mainly procedural however here we are concerned with those provisions of the code which entitle female accused of certain rights during course of investigation enquiry or trial of an offence with which he is charged. Rights of female accused can be categorized following

#### **Provisions relating to arrest**

- Section 46 envisages three modes of arrest (a) submission to custody (b) touching the body (c) confining the body. Under this provision in making arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested. But in case of female accused it will be the female police officer who shall make the arrest.

Proviso to section 46(1) Provides that

“where a woman is to be arrested then, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation', of arrest shall be presumed and unless the circumstances otherwise require or unless the police officer arresting is a female, the police officer shall not actually touch the person of the woman for making her arrest.”

- Sub section 4 of 46 provides that Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.
- The proviso of Section 47 requires that if an apartment to be searched by the police is in the occupancy of a woman who according to custom does not appear in public then the police ought to serve her a notice to leave the place during the search. This is to avoid intruding on her privacy and causing any embarrassment to her.
- Section 51 (2) A women must not be searched except by female with strict regard to decency. The document prepared by the I.O should indicate this along with the name of female officer who conducted search and the personal search memo should also indicated all the details. Failure amounts to violation of the basic of female<sup>5</sup>

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<sup>4</sup> *Hussainara Khatoon (IV) v. home Secretary, State of Bihar, AIR 1979 SC 1379*

<sup>5</sup> *State of Punjab v. Baldev Singh, AIR 1999 SC 2378*

- Female must be interrogated only in the presence of female police<sup>6</sup>
- Section 52 clause 2 states that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.
- Section 53 clause 2 says that whenever a female is to be examined by the medical practitioner at the request of police officer , the examination shall be made only by or under the supervision of, female registered medical practitioner.
- In case of examination of arrested female person by medical officer , the examination of the body shall be made only by or under the supervision of a female medical officer and in case the female medical officer is not available, by a female registered medical practitioner.

**Provisions relating to search and processes to compel the production of things**

- Under section 98 deals with Power to compel restoration of abducted females, it is upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge or such child, and may compel compliance with such order, using such force as may be necessary
- Under section 100 clause 3 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 another woman with strict regard to decency.

**Provisions relating to Investigation**

- In case of investigation it is provided that police officer while requiring attendance of witnesses under section 160(I) proviso should not be allowed to question any male person under the age of eighteen years or above the age of sixty five years or a woman or physically disabled person at any place other than the place in which such male person or woman resides.

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<sup>6</sup> Sheela Barse v. State of Maharashtra, AIR 1983 SC 378

- Section 199 takes care of women who by reason of customary practices do not appear before the court or the police. In cases affecting such women, others have been permitted to complain on their behalf

### **Prisoners Act 1894**

The following provisions deals with women prisoner's right under Prisoners Act 1894

- **Section 3(2)** of prisoners act 1900 says criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial;
- **Section 24** deals with Prisoners to be examined on admission.—In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

Clause 3 states that in the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer."

### **Unlawful Activities ( Prevention) Act, 1967**

**Section 6** states that Any police officer, not below the rank of a sub-inspector, or any other person authorised in this behalf by the Central Government may search any person entering, or seeking to enter, or being on or in the notified place and may detain any such person for the purpose of searching him:

Provided that no female shall be searched in pursuance of this sub-section except by a female

## **B. Rights of Women Under-Trial.**

### **Provisions relating to trial and judgement under Code of Criminal Procedure, 1973**

- Under section 360 the Court may order to release on probation of good conduct or after admonition any woman who is convicted of an offence not punishable with death or imprisonment for life, and if no previous conviction is proved against the offender, and if it appears to the Court before which she is convicted, regard being had to the age, character or antecedents of the female offender, and to the circumstances in which the

offence was committed, that it is expedient that she should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, court may direct that she be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour.

- The concern of the CRPC for the woman goes to the extent of incorporating a proviso in Section 416 whereby when a woman sentenced to death is found to be pregnant, the High Court can postpone the execution of the sentence and, if it thinks fit, commute the sentence to imprisonment for life. Obviously this provision indicates the value accorded to motherhood by the criminal justice system. It also shows a legal unwillingness to kill a to-be-born child in the womb of a convicted woman since it has not committed any crime. It is now proposed that the proviso to Section 416 may be so amended as to make it mandatory on the High Court to order commutation when a woman sentenced to death is found pregnant.
- The attitude of the special concern the criminal justice system adopts in dealing with women can also be gleaned from various provisions like the proviso to Section 437 CRPC. As a general rule Section 437 lays down that persons accused of offences carrying heavy punishments should not be released on bail. The proviso makes the above rule inapplicable to cases of children below 16 years, sick or infirm persons and women. In other words, even in serious cases, women and children would be granted bail. This, it appears, is to ensure that women and children are not held in prison for long periods as such confinement may have other more harmful consequences.
- Women prisoners should be exempted from the rigours of Section 433-A. In other words, in the case of women convicted of serious offences and serving life sentence the obligation to serve 14 years need not be insisted upon. This would mean that a life sentence in the case of a woman would not have to be 14 years of imprisonment.
- Section 437 clause 1 proviso provides that women can be released on bail in case of non-bailable offence.

**Jail Manual 1968 ( Model Prison Manual for the superintendence and management of prisons in India)**

The following provisions deal with the custodial rights of women under- trial in the model prison manual for the superintendence and management of prison in India.

**Section 22.61.** Women under trial prisoner should normally be escorted by women police. When there are no women police available, they should be accompanied by woman Prison Guard. As far as is practicable, separate conveyance should be provided for the transport of women under trial prisoners;

**Section 22.62.** Women staff members shall be in charge of women under trial prisoners. The Lady Assistant Superintendent or Senior Matron should be present at the time to admission and release of women under trial prisoner. She should attend to all work pertaining to the women under trial prisoners;

**Section 22.63.** As far as possible, women under trial prisoners should be handed over to their relatives after release. If this is not possible, a woman police or woman prison guard should escort the released woman under trial prisoner to the nearest station or transport bus stand.

### **C. Rights of Women Offender**

The State Government shall establish separate prisons for women offenders. Till separate prisons for women are established, both male and female inmates can be confined in the same prison on the condition that female offenders are to be kept in a strictly secluded female enclosure. Such enclosure should be, to the extent possible, independent in terms of infrastructural set-up.

#### **1. Prisoners Act 1894**

- **Section 27 (1)** deals with Separation of prisoners.—The requisitions of this Act with respect to the separation of prisoners are as follows:—  
in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners;
- **Section 46** deals with Punishment of such offences.—The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by— whipping, provided that the number of stripes shall not exceed thirty: Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

## **2. Indian Penal Code, 1860**

### ▪ **376C. Intercourse by superintendent of jail, remand home, etc.—**

Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation 1 — "Superintendent" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

## **3. Rights under Section 24 of Jail Manual Act 1968**

### **Classification and Separation**

Women prisoners shall be classified and kept separately as under:

(i) ) In no circumstances should adolescent girls be confined with adult women prisoners.

### **Restriction on Women Prisoners**

No female prisoner shall, on any pretext, leave or be removed from the female enclosure except for release, transfer, or attendance at court, or under the order of the superintendent for other legitimate purposes.

Every female prisoner authorised to leave her enclosure will ordinarily be accompanied by a matron or assistant matron, chief warder or female warder from the time she leaves till she returns.

### **Custody of the Female Enclosure**

There shall be round the clock duty of female head warders and female warders in the female enclosures.

### **Search of Women Prisoners on Admission**

Women prisoner shall be searched by female warders in the presence of other senior women personnel/women officer with due regards to consideration of privacy and decency.

### **Pregnancy**

When a woman prisoner is found, or suspected, to be pregnant at the time of admission or later, the lady Medical Officer shall report the fact to the Superintendent. Arrangements shall be made at the earliest to get her medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy and the probable date of delivery. After ascertaining all necessary particulars, a detailed report shall be sent to the Inspector General of prisons.

Gynaecological examination of the female prisoner shall be performed in the District Government Hospital. Proper pre-natal and ante-natal care shall be provided to the prisoner as per the advice of qualified medical officer.

### **Child Birth in Prison**

As far as possible (provided the prisoner has a suitable option) arrangements for temporary release (or suspension of sentence in the case of a casual offender) will be made to enable a prisoner to deliver child outside the prison. Only when there is high security risk in the case of any particular woman prisoner, the facility to deliver child outside the prison shall be denied.

Births in prison shall be registered at the local birth registration office. The fact that the child has been born in prison shall not be recorded as the place of birth. Only the address of the locality shall be mentioned. As far as the circumstances permit, all facilities for performing the naming rites of the child born in a prison shall be extended to the mother.

### **Property of Women Prisoners**

All money, jewellery, and articles of clothing, received with or found on the person of a woman prisoner on her admission to the prison, or sent subsequently by the police, or tendered by her relatives or friends on her behalf prior to her release, shall be received and taken over by the Deputy Superintendent or other officer on duty. A list of all such articles shall be entered in the Admission Register and in the convict's warrant and read over to the convict in the presence of the Superintendent who shall countersign the entries in the register and in the warrant..

### **Certain Ornaments to be allowed to Women Prisoner**

Female prisoners shall be allowed to retain, in moderation, certain ornaments of small value such as mangal sutras, bangles and toe rings. The Superintendent may, however, at his discretion, refuse to allow the retention of these ornaments in any particular case for disciplinary/security reasons..

### **Vocational Training**

As far as possible women prisoners shall be imparted training suited to their aptitude and background, making them economically self-reliant. Vocational training in useful trades shall be provided to women prisoners. The selection of vocational programmes shall be made in accordance with the marketability and profitability of the product, enhancing the prisoner's ability to earn their livelihood after release. Sufficient work or vocational trades shall be provided to keep prisoners actively employed for a normal working day.

#### **Labour**

Prisoners shall be paid equitable remuneration for their work and no disparity in wages shall accrue on account of gender differences.

#### **Medical Facilities**

Every woman prison shall have a 10 bed hospital for women.

Treatment programmes should be properly planned and developed in every woman's prison. At least one and more woman gynecologist and psychiatrist shall be provided. Modern equipments for X-ray, ECG, ultrasound and sonography should be available.

Female offenders suffering from mental disorders, anxiety, drug addiction are sex perversion should get proper medical treatment and psychotherapy.

#### **Legal Aid**

Assistance of lady members of the district legal aid committee shall be made available to women prisoners to help them with their procedural and legal problems.

The practice of fortnightly or weekly *nari bandi sabhas* (women prisoner's councils) shall be utilised as a modality for orientation of, and interaction with, prisoners and for training in participative custodial living.

Judicial pronouncement relating to rights of women in custody.

#### **a. D.K.Basu v. State Of West Bengal , AIR 1997 SCC 416**

The Hon'ble Supreme Court, in D.K.Basu Vs State of West Bengal, has laid down specific guidelines required to be followed while making arrests.

The principles laid down by the Hon'ble Supreme Court are given hereunder:

- i. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their



designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register

- ii. That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
- iii. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- iv. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- v. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- vi. The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
- vii. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
- viii. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- ix. A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest

and at the police control room it should be displayed on a conspicuous notice board.

**b. Nandani Satpathy v. P.L.Dani , AIR 1978 SC 1025**

The court held that the right not to make self incriminatory statements should be widely interpreted to cover the pre-trial stage of police investigation. It also criticized the police for calling women to police investigations. It also criticized the police for calling women to police stations for investigation saying this constitute a violation of section 160 (1) of the Cr.P.C, which requires the police to interview males under 15 and women in the places where they reside.

**c. Sheela Barse v. State of Maharashtra, AIR 1983 SC 378**

The Supreme Court in Sheela Barse vs. State of Maharashtra, (1983) 2 SCC 96, devised number of guidelines to ensure protection of woman prisoners:-

(i) We would direct that four or five police lock-ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in a police lock-up in which male suspects are detained

(ii) We would further direct that interrogation of females should be carried out only in the presence of female police officers/constables.

(iii) Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail.

(iv) We would direct that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest; and lastly

**d. Dr. Upendra Baxi And Others v. State of U.P. , AIR 1987 SC 191**

The Court directed that Superintendent of the Protective Home shall take care to see that no woman or girl is detained in the Protective Home without due authority and process of law.

The District Judge, Agra who carries out monthly inspection of the Protective Home shall verify during every visit that no woman or girl is detained except under the authority of law and if he finds that any of them is detained without any authority of law, he shall take steps to see that she is released and repatriated to her parents or husband or other proper authority.

Supreme court also directed the State Government to set up, within a period of two weeks from the receipt of this Order, a Board of Visitors on which there shall be at least three social activists working in the field of welfare of women and particularly suppression of immoral traffic in women and there shall also be included in the Board of Visitors two persons to be nominated by the District Judge.

**e. Christian Community Welfare Council Of India and Another v. Government Of Maharashtra and Others, AIR 1995 Cri. L.J. 4223 Bombay**

The Apex Court has laid down the guidelines for effective enforcement of the fundamental rights in the aforesaid judgment, as under (Para 26) :-

"1. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Arts. 21 and 22(1) and enforced strictly.

The court observed that the object would be served if a direction was issued to the arresting authority that while arresting a female person, all efforts should be made to keep a lady constable present.

**f. R.D. Upadhyay v. State of Andra Pradesh , AIR 2006 SC 1946**

The Supreme Court has formulated guidelines regarding pregnancy, antenatal, child-birth and post-natal care and child The Apex court has clearly stated guidelines regarding Gynaecological examination, regarding Pregnancy, regarding Child birth in prison and regarding child care  
Conclusion And Suggestions.

The present study reveals that separate women prisons are essential to keep the women prisoners. The number of women prisons is not sufficient in India and it should be increased. Women prisoners being women have special requirements which should be necessarily fulfilled. The number of under trial prisoners should be reduced to the maximum extent to reduce the burden over jails. Prisons should be converted into correctional homes. It is essential for the women prisoners for their reformation and rehabilitation. To fulfil this purpose it is compulsory that they should be provided basic facilities in the prison. There is need of special training programme for the prison officials so that their behave towards the women prisoners can be changed and they can give importance to the basic human rights of the women prisoners.

Mulla Committee had recommended the appointment of full time lady medical officer in case women prison contains 25 or more women prisoners and in case of fewer women prisoners lady medical officer should be appointed on part time basis. The efforts should be made on war footing to reduce the strength of women under trial prisoners and for this purpose the procedure of plea bargaining can be adopted..

The Supreme Court directions need to be implemented regarding women prisoners' requiring assistance in pregnancy, ante-natal, natal and post-natal care. Children of the women prisoners must be provided care as per the guidelines.

Any intervention must start with the prisoner, the moment she enters the prison.

**Privacy and dignity:** Women prisoners' privacy and dignity must receive the topmost priority.

**Female staff:** There must be a female doctor inside the prison as well as female guards in charge of the female prison premises.

**Health check-up:** Women prisoners must be routinely screened for physical and mental health problems and provided treatment at the earliest.

**Peer support group:** Self-help groups among women prisoners can be of great help during stressful situations – Entry into prison, during bail, preparation for court appearances, unpleasant events at home like death of a family member, before, during and after judgement.

**Mental health and counselling:** Considering the mental health morbidity in women prisoners, mental health services and counselling needs to be provided. Effective planning for mental health care after release is vital, particularly for women with severe mental illness.

**Family counselling:** Involvement of family members in counselling is an essential component to good health of women prisoners.

**Vocational Rehabilitation:** Adequate opportunities must be provided to work and keep them busy. Adequate planning for livelihood after release, particularly for women without family support is extremely important.

**Behavioural rehabilitation:** High-risk behaviours such as aggression, violence, self-injurious behaviour, impulsivity, sexual behaviour and substance use need to be addressed with appropriate techniques.

**Suicide prevention strategies:** Frequent meetings with prisoners will help in prompt identification of their problems, generation of solutions and reduction in distress. Prison staff requires training on how to identify mentally illness and use crisis intervention techniques.