



## RIGHTS OF WOMEN PRISONERS IN INDIA: AN EVALUATION

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**Abstract:** *Indian society gives a respectable status to the women. She plays a vital role in the society. The important role she plays is in the capacity of mother. Constitution of India gives status of equality to the women in India. It also imposes obligation on the State to protect the rights of the women and to fulfil the requirements of international conventions regarding the rights of the women. But the reality is women in prisons are facing a number of problems. Even her basic human rights are being ignored despite of a number of directions from the Supreme Court, High Courts and by recommendations of different Committees. It creates difficulties to them in the prison which requires a special attention and needs to be removed. Women prisoners in Indian jails are less in number than the male prisoners. It may be a cause of overlooking the rights of women prisoners. The main purpose of this research paper is to highlight the problems of the women prisoners, violation of the human rights of the women prisoners, condition of women jails, to enumerate human rights and constitutional rights of the women prisoners and to suggest the necessary changes in the Indian Prisons Act 1894.*

**Keywords:** *Prisons, Constitutional Rights, Human Rights, Sexual Harassment, Custodial Torture, Women Prisoners*

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## **1. INTRODUCTION:**

Indian society gives honourable status to the women. The position of a woman in the Vedas and the Upanishads is that of a mother (mata) or goddess (Devi). In the Manusmriti, woman is considered as a precious being or be projected first by her father, then by her brother and husband and finally by, her son. Presently women represent 48.2 percent of the country's population. Several developmental programmes have been implemented by the Five Year Plans. In 1985, a separate Department of Women and Child Development was set up. The major programmes include Support to Tanning-cum- Employment Programme (STEP) for women, Mahila Kosh, Women's Development Corporation, etc. In India there is also need of the programmes for solving the acute problems of women prisoners inside or outside the prisons.

Court is also considering the rights of the women. The Supreme Court has made a ruling that a mother has the right to act as the guardian of her minor child. It has made sexual harassment at workplace as an offence.<sup>1</sup> On July 13, 2010, the Delhi High Court ruled that a pregnant woman student cannot be barred from taking examinations in any semester, due to attendance shortage. The court directed the Delhi University and Bar Council of India, to relax the strict attendance rules, for students who are unable to attend classes, due to pregnancy.<sup>2</sup> In a male-dominated Indian society, women often face discrimination. A number of crimes are also being committed against the women in the society. Women are exploited in the society at different levels because of their unawareness about their legal rights. Condition of the women prisoners is also not good. They are being oppressed and tortured in the prisons. Custodial horror is a daily occurrence for women prisoners in India. What can a woman do when her 'custodians' become her violators? The question is very intimidating and frightening but this is actually happening to women in India. There have been innumerable cases where 'men-in-khaki,' as we usually refer to the police as, have

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<sup>1</sup><http://www.publishyourarticles.org/knowledge-hub/essay/an-powerful-essay-on-the-status-of-women-in-india.html>

<sup>2</sup> <http://www.lawisgreek.com/category/constitution-india/landmark-court-rulings>



been caught outraging the women prisoners' modesty, inside and outside the jail. Worse, women prisoners in India are not just raped but even murdered by policemen.<sup>3</sup>

Most of the women in Indian jails are of poor background. A woman of sound background whatever may be the ground, generally avails all the privileges in the jail as Rajya Sabha member K. Kanimozhi was sent to Tihar jail on the basis of involvement in high profile 2G spectrum case. She pleaded in the court that she should get bail on the grounds that she is a woman and a mother and was granted bail on November 28, 2011. In judicial custody for over six months, she was given a separate cell in the women's section, equipped with a bed, a television and a toilet.<sup>4</sup> But what about the women having no privilege, who suffer a lot of problems in the prison. Most of the women do not even know about the court procedure.

Moreover the Prison Act, 1894 is too old. It contains no provisions regarding welfare of the women prisoners. Deputy Director, Institute of Correctional Administration, Chandigarh<sup>5</sup>, Dr. Upneet Lalli mentioned that the Prisons Act, 1894 focuses only on prison security, offence and punishment and not on correction, reformation and rehabilitation of prisoners. She felt that problems still existed and changes were required in the areas of overcrowding, delay in trial and legal aid, health and hygiene, prison visits-procedure, food-hygiene, quality, service, poor living conditions, women and children-drugs, mobiles, security issues, lack of educational, vocational training, lack of reformation and slow pace of modernization. She stated that as about 4.1% of prison population consisted of women, the problems of women prisoners should also be given due care.<sup>6</sup>

This paper has been prepared to consider the rights of the women prisoners in India and also highlights the problems of the women prisoners in the prison. Non doctrinal method has been used to prepare this paper. This paper has been divided into five parts. First part is introduction which says about the general conception about the women in India. Second part discusses about the constitutional status of women in India. It describes the various

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<sup>3</sup> <http://www.lawisgreek.com/tag/women-rights>

<sup>4</sup> <http://www.youthkiawaaz.com/2012/02/the-deplorable-condition-of-women-prisoners-in-india>

<sup>5</sup> In a National Seminar on Prison Reforms on 15 th April, 2011 at Jacaranda Hall, IHC, New Delhi

<sup>6</sup> <http://nhrc.nic.in/Documents/Minutes%20&%20Reco%20Prison%20Reform.pdf>



constitutional provisions of the Constitution of India which provide equal status to the women. Third part of this paper describes different rights of the women prisoners. It describes their basic human rights, constitutional rights and statutory rights. Fourth part is related to the problems of the women prisoners. It describes various problems which they are facing in their day to day life in the prison. Fifth part of this research paper concludes it and also gives some suggestions.

## **2. CONSTITUTIONAL STATUS OF WOMEN IN INDIA:**

Constitution of India does not provide specific guarantee to the women prisoners.<sup>7</sup> However, the Indian Constitution gives the status of equality to the women. The Founding Fathers of the Indian Constitution gave serious thought to protect and promote the rights of Women and Children. This is amply reflected in the Preamble which contains “the ideals and aspirations of the people of India”. One of the golden ideals is “the equality of status and of opportunity”.<sup>8</sup> 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.<sup>9</sup> India has also ratified various International Conventions and Human Rights Instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.<sup>10</sup> Article 12 (2) of this Convention provides that States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services

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<sup>7</sup> <http://Woman & Child Prisoners>Welcome to ANSWERING LAW India's Premier Portal for Lawyers, Students, NRI's and Public RIGHTS OF PRISONERS - A MYTH OR REALITY- AISWARYA.T,3rd Semester, NUALS.htm>

<sup>8</sup> <http://airwebworld.com/articles/index.php?article=1245>

<sup>9</sup> <http://www.rwi.lu.se/pdf/seminar/manoj05.pdf>

<sup>10</sup> <http://wcd.nic.in/>



where necessary, as well as adequate nutrition during pregnancy and lactation.<sup>11</sup>

Article 3 of the Universal Declaration of Human Rights states that everyone has the right to life, liberty and security of person and Article 5 states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>12</sup> Article 10 (1) of the United Nations Covenant on Civil and Political Rights states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” and Article 6(1) states that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.<sup>13</sup> Therefore, both under National as well as International Human Rights Laws, inhuman and degrading treatment to women prisoners is prohibited and the State is under obligation to uphold and ensure observances of basic human rights and constitutional rights of women prisoners in the prisons. In spite of the various constitutional provisions providing status of equality to the women in India, the condition of the poor women prisoners is not good. They are being ignored and tortured in the prisons. Imprisonment does not spell farewell to fundamental rights, the Supreme Court of India has made it very clear in many judgements that except for the fact that the compulsion to live in a prison entails by its own force the deprivation of certain rights, like the right to move freely, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution.<sup>14</sup> Prisoners cannot be treated as animals and are not to be punished except in accordance with Laws.<sup>15</sup>

### **3. WOMEN PRISONERS’ RIGHTS:**

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>16</sup> held that whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods ‘right, just and fair’. The

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<sup>11</sup> <http://www.unhcr.org/refworld/pdfid/3ae6b3970.pdf>

<sup>12</sup> <http://www.un.org/en/documents/udhr/index.shtml#a>

<sup>13</sup> <http://www2.ohchr.org/english/law/ccpr.htm>

<sup>14</sup> Charles Shobraj vs. Superintendent, Tihar Jail, AIR 1978, SC 1514

<sup>15</sup> <http://Woman & Child Prisoners/Proposition laid down by the Supreme Court of India in the context of Torture in prisons and Human Dignity.htm>

<sup>16</sup> AIR 1980 SC 1579



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.<sup>17</sup> Hence, the management and administration of prisons come under the domain of the State Governments. Thus, the respective governments while making Prison Manuals should consider all the provided guidelines.

The different types of human rights, constitutional rights and statutory rights of women prisoners are discussed as under:

1. The search and examination of the female prisoners shall be carried out by the Matron under the general or special order of the Medical Officer;<sup>18</sup>
2. The female prisoners have the right to live separate from the male prisoners. Section 27(1) of the Prison Act 1894 provides that 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 a manner as to prevent their seeing or conversing or holding any intercourse with the male prisoners; this right is also provided by Rule 8(a) of Standard Minimum Rules for the Treatment of Prisoners.
3. About the maintenance of certain prisoners from private sources, section 31 of the Prison Act 1894 provides that a civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessities, but subject to examination and to such rules as may be approved by the Inspector General.
4. About supply of clothing and bedding to civil and unconvicted criminal prisoners section 33 (1) of the Prison Act, 1894 provides that every civil and unconvicted

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<sup>17</sup> <http://www.vakilbabu.com/Laws/SubList/SList.htm>

<sup>18</sup> The Prison Act, 1894, Section 2, 1894, Section 24 (3).



criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

5. All the prisoners have the basic human rights such as hygienic food, shelter, medical facilities and facilities of reading and writing. They must be treated with dignity in the custody and cannot be isolated in a separate cell, except on medical grounds or if he/she has proven to be dangerous to other prisoners.<sup>19</sup> It is the human right of a pregnant lady to have full facility (medical and personal) at the time of delivery. Women prisoners who are pregnant cannot be provided the full facilities during the pregnancy. Hence at the time of delivery they can be released on bail for the delivery.
6. The Standard Minimum Rules for the Treatment of Prisoners provide under-  
Rule 53(1) that 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.  
Rule 23 (1) provides that 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

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<sup>19</sup> <http://Woman & Child Prisoners/Rights of Prisoners in India.htm>



their mothers.

Rule 24 that the medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

Rule 25 (1) that the medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed. (2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

Rule 26 (1) that the medical officer shall regularly inspect and advise the director upon: (a) The quantity, quality, preparation and service of food; (b) The hygiene and cleanliness of the institution and the prisoners; (c) The sanitation, heating, lighting and ventilation of the institution; (d) The suitability and cleanliness of the prisoners' clothing and bedding; (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities. (2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.<sup>20</sup>

7. The National Commission for Protection of Child Rights (NCPCR) has recommended that women in jail who are pregnant, ill or have children dependent on them should

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<sup>20</sup> [http://unispal.un.org/UNISPAL.NSF/0/70D535E1E3DCA2B885256F010074\\_C34D](http://unispal.un.org/UNISPAL.NSF/0/70D535E1E3DCA2B885256F010074_C34D)





be considered for early release on personal bonds. The guidelines prepared by NCPCR state that while the nature of the crime cannot be overlooked, the condition of women prisoners could be considered when they have few means and are responsible for young children.<sup>21</sup>

8. 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.<sup>22</sup>

The report of Dr. (Miss) A.R. Desai, Director of the College of Social Work, Nirmala Niketan, Bombay in the case of Sheela Barse vs State of Maharashtra<sup>23</sup> stated among other things that there was no adequate arrangement for providing legal assistance to women prisoners and that two prisoners who were foreign nationals complained that a lawyer duped and defrauded them and misappropriated almost half of their belongings and jewellery on the plea that he was retaining them for payment of his fees. Supreme Court in Sunil Batra vs Delhi Administration<sup>24</sup> held that Lawyers nominated by the District Magistrate, Sessions Judge, High Court or the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. The lawyers so designated shall be bound to make periodical visits and record and report to the concerned courts, results which have relevance to legal grievances.

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<sup>21</sup>[http://articles.timesofindia.indiatimes.com/2008-05-23/india/27771005\\_1\\_women-prisoners-ncpcr-legal-aid](http://articles.timesofindia.indiatimes.com/2008-05-23/india/27771005_1_women-prisoners-ncpcr-legal-aid)

<sup>22</sup> <http://Woman & Child Prisoners/Jails should reform prisoners' - Times Of India.htm>

<sup>23</sup> AIR 1983 SC 378.

<sup>24</sup> AIR 1980 SC 1579



The Legal assistance to a poor or indigent accused, arrested and put in jeopardy of his life or personal liberty, is a constitutional imperative mandated not only by Article 39A but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law.<sup>25</sup>

9. Section 303 of the Criminal Procedure Code, 1973 empowers the prisoners to be defended by the pleader of their choice and Section 304 of this code provides that in certain cases legal aid is to be provided at state expense. 309 (1) of the criminal procedure code provides that in every inquiry or trial, the proceedings shall be held as expeditiously as possible. Similarly, mere sentence does not restrict the right to freedom of religion.
10. Women prisoners have the right to speedy trial. There is an undoubted right of speedy trial of undertrial prisoners, as held in a catena of cases of Supreme Court. The Supreme court of india in the case of Hussainara Khatoon vs Home Secretary, State of Bihar<sup>26</sup> held that speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution.
11. Section 54 of the Code of Criminal Procedure 1973 provides for examination of body of an arrested person by a registered medical practitioner at the request of the arrested person in case of torture and maltreatment in lock ups. But generally women prisoners are not aware about this right.<sup>27</sup>
12. Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre- natal and post-natal care for both, the mother and the child. Gynaecological examination of female prisoners shall be performed in the District

<sup>25</sup> Sheela Barse vs State of Maharashtra, AIR 1983 SC 378

<sup>26</sup> (1980 ) 1 SCC 81. <http://www.lfhri.org/index.php/judgements/human-rights-judgements/22-speedy-trial>

<sup>27</sup> <http://www.vakilno1.com/bareacts/CrPc/s54.htm>



Government Hospital.<sup>28</sup>

13. The Articles 72 and 161 of the Indian Constitution add a human touch to the country's judicial process by conferring powers on the President and the Governors of States, respectively to grant pardon or show mercy to the prisoners.<sup>29</sup>

#### 4. PROBLEMS OF WOMEN PRISONERS:

The substantial condition of a large number of prisons in India continues to be bad, dehumanising and violative of the residuary rights of inmates. Over the years, prisons have become place of low visibility where inhumane and even cruel conditions have prevailed. The possibility of inflicting injury and injustice on inmates has always lurked in these closed institutions. Unfortunately the state's supervision over day to day happenings within such institutions has become a mere formality and surveillance of society is conspicuous by its absence.<sup>30</sup> There has been a plethora of recommendations for the improvement of these conditions both from recommendatory bodies and from the apex judiciary but a large chunk of these recommendations has not seen the light of the day.<sup>31</sup> Women prisons in India are not sufficient in number. According to the Prison Statistics India 2010 the number of total prisons is 1393, the classification of which is shown in the below mentioned Table<sup>32</sup>.

**Table- 1**

Name of Jail	Number of Jails	Name of Jail	Number of Jails
Women Jails	18	Open Jails	44
Central Jails	123	Borstals Schools	21
District Jails	322	Special Jails	26
Sub Jails	836	Other jails	3

<sup>28</sup> R.D. Upadhyay vs State of A.P. & Ors, AIR 2006 SC 1946.

<sup>29</sup> <http://Woman & Child Prisoners\Prison Law and Regulations Indian Law.htm>

<sup>30</sup> Monitoring Prisons: A Visitors Guide, 2010 by Commonwealth Human Rights Initiative.

<sup>31</sup> <http://www.hindu.com/op/2004/04/20/stories/2004042000251700.htm>

<sup>32</sup> National Crime Records Bureau, Ministry of Home Affairs, India.



This table shows that there are only 18 women prisons in the country and jails exclusively for women prisoners exist only in 12 States/UTs. Women prisoners are facing a number of problems in the jails. The problems they are facing can be discussed as under:

i) Shortage of Women Prisons:

In India, there is shortage of women prisons. Women prisoners are facing the problem of overcrowding in the prisons. Overcrowding itself is a generator of many problems. In such circumstances, it becomes impossible to perform day to day activities of the life. The data of Tihar Jail (as on 30 April 2012) only demonstrates the problem of overcrowding of prison in Table –II.

**Table – II**

<b>Total Capacity of the Women Prison in Tihar Jail</b>	<b>Number of women prisoners in the Prison</b>
<b>400</b>	<b>516</b>

Table shows that in the Tihar jail the capacity of the women jail is of 400 but the total number of women prisoners who are staying there is 516. It means 116 more women prisoner are staying without any capacity of their accommodation. Out of 516 women prisoners, 121 are convicted and 395 are undertrials.<sup>33</sup> If we look towards India as a whole, as per available statistics the capacity of 18 women jails is only of 3600 female prisoners. But the total female jail inmates as on 31.12.2010 were 15037 which is 4.1% of the total prisoners. Out of which 4632 female prisoners were convicts, 10252 females were undertrial prisoners, 106 females were detenues and 47 other women inmates. Out of the total women prisoners i.e. 15037 only 2799 female prisoners are living in the women prisons.<sup>34</sup>

In a National Seminar on Prison Reforms on 15th April, 2011 at Jacaranda Hall, IHC, New Delhi, at the time of welcoming the participants, Director General (Investigation), NHRC, Sri Sunil Krishna, said that overcrowding in prisons is one of the reasons for the unhygienic conditions prevailing in prisons. The strength of undertrial women prisoners is also a

<sup>33</sup> [http://www.delhi.gov.in/wps/wcm/connect/lib\\_centraljail/Central+Jail/Home/Prisoner+Profile](http://www.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Prisoner+Profile)

<sup>34</sup> Supra Note 32.



considerable problem to which they are facing and sometimes they face the custodial torture. According to the National Crime Records Bureau's (NCRB) prison statistics, till the end of 2010, 34 deaths of female inmates were reported in 2010, out of which 5 deaths were suicidal in nature.<sup>35</sup> In some cases women prisoners have been spent more time in the jail than the punishment may be awarded for their committed offence. Only in Tihar Jail as on 30 April 2012, 76.55% women prisoners were undertrial. The data of classification of women undertrial prisoners in Tihar Jail as per the length of stay in Jail is shown in table-III.<sup>36</sup>

**Table – III**

Period of Stay in the Prison of Tihar Jail	Number of Women Prisoners
Up to 01 month	57
01 - 03 months	68
03 - 06 months	39
06 - 12 months	82
12 - 24 months	76
24 - 36 months	25
36 - 48 months	20
48 - 60 months	17
Above 60 months	11
<b>Total</b>	<b>365</b>

The Supreme Court of India is also taking in consideration the problem of prolonged detention of undertrial prisoners. In, "Common Cause" a Registered Society through its Director vs UOI and Ors,<sup>37</sup> the supreme court in regard to the release of undertrial prisoners held that it is a matter of common experience that in many cases where the persons are accused of minor offences punishable not more than three years or even less, with or

<sup>35</sup> <http://sanhati.com/articles/4747/>

<sup>36</sup> [http://www.delhi.gov.in/wps/wcm/connect/lib\\_centraljail/Central+Jail/Home/Prisoner+Profile](http://www.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Prisoner+Profile)

<sup>37</sup> 1996 AIR 1619.



without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jails for long periods either because there is no one to bail them out or because there is no one to think of them. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression. Even in case of offences punishable for seven years or less with or without fine, the prosecutions are kept pending for years and years together in criminal courts. It appears essential to issue appropriate directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution. Court also clarified that in such cases, the criminal proceedings have remained pending despite full cooperation by the concerned accused to get these proceedings disposed of and the delay in the disposal of these cases is not at all attributable to the concerned accused, nor such delay is caused on account of such accused getting stay of criminal proceedings from higher courts.

ii) Lack of Necessities:

Women prisoners in India do not even have proper accommodation or recreation. Basic facilities are lacking for the women and their children. Women prisoners are also visibly scared of the prison staff. There is scope for vast improvement, on all levels, particularly in the attitude of the prison staff that need to learn to respect the human rights of women prisoners.<sup>38</sup>

Most of the women prisoners are also mothers and their children are staying with them in the prison but the prison is not a place for healthy growth of a child. Prison environment affects the growth, survival and development of the children. Children who stay with their mothers in prisons are denied their basic rights to pre-school education.<sup>39</sup> While in jail, communication with outside world gets snapped with a result that the inmate does not know what is happening even to his near and dear ones. This causes additional trauma.<sup>40</sup>

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<sup>38</sup> <http://ijg.sagepub.com/content/16/2/253>

<sup>39</sup> <http://edition.myjoyonline.com/pages/news/200705/5199.php>

<sup>40</sup> Rama Murthy vs State of Karnataka, AIR 1997 SC 1739



In *Francis Coralie Mullin vs The Administrator, Union Territory of Delhi and others*<sup>41</sup>, The Supreme Court held that the power of preventive detention has been recognised as a necessary evil and is tolerated in a free society in the larger interest of security of the State and maintenance of public order. It is a drastic power to detain a person without trial and in many countries it is not allowed to be exercised except in times of war or aggression. The Indian Constitution does recognise the existence of this power, but it is hedged-in by various safeguards set out in Articles 21 and 22. The prisoner or detenu has all the fundamental rights and other legal rights available to a free person, save those which are incapable of enjoyment by reason of incarceration. As a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just. Moreover, medical facility in the prison is not satisfactory. It is poor. The inadequacy of medical services in prisons, often resulting in the death of prisoners has been much in evidence. Statistics in the Annual Reports of the NHRC reveal that there are a much larger number of deaths in judicial custody than there is in police custody. Given the frequency and seriousness of the complaints about medical services in prisons, it would bear investigation to find out how many of the deaths in judicial custody are, in fact, occasioned by medical negligence.<sup>42</sup>

iii) Torture in Custody:

Sexual assault to the women prisoners is also a major problem which they are facing. There are horror stories about the torture in custody to the women prisoners. Asian Centre for Human Rights (ACHR) stated that custodial rape remains one of the worst forms of torture perpetrated on women by law enforcement personnel and a number of custodial rapes of women take place at regular intervals. The NHRC recorded 39 cases of rape from judicial and police custody from 2006 to 28 February 2010. Citing the case of Maloti Kalandi, wife of

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<sup>41</sup> AIR 1981 SC 746.

<sup>42</sup> [http://ihranewdelhi.com/hr\\_prisons.html](http://ihranewdelhi.com/hr_prisons.html)



Badal Kalandi who along with children was rescued from being trafficked, was handed over to the Tamulpur police station, Baksa district of Assam for safe custody. Instead of providing safety, Sub-Inspector Sahidur Rahman summoned the victim to his official quarter and raped her.<sup>43</sup> A few women who served prison terms have alleged torture and inhuman treatment within the prisons across Tamil Nadu. They say that they were stripped naked and abused verbally and physically and not provided even basic facilities. Parameswari of Annaiyur in Madurai said I was stripped naked by convict wardens in the presence of the jail wardens and other prisoners and abused both verbally and physically. Similarly two more prisoners, Munniammal who had been lodged in the Nilakottai sub-jail for robbery and M Muthulakshmi who had been arrested by the police for illicit brewing of liquor, said they were never given anything but gruel in the prison. They also said that four to eight prisoners were crammed into a cell and they were forced to use a small corner as their toilet, without even a curtain to provide them privacy.<sup>44</sup>

A Tihar Jail's woman prisoner, facing trial in cases of cheating and forgery, has accused the jail warden of torturing her with the help of HIV positive woman inmate for extorting money from her. She alleged that she was beaten up for an hour in front of the deputy superintendent and the jail staff who remained mute spectators.<sup>45</sup> Women prisoners are not safe in lock ups. Ms. Saradha was brought to Special Prison for Women, Vellore, Tamil Nadu, as a remand prisoner having been remanded by the Judicial Magistrate. She was undressed totally and dragged nude for quite some time till they reached the entrance of her cell and was put in solitary confinement and she was never given back her clothes and no official in the prison bothered about her. She was awarded 50000/- as compensation by the court.<sup>46</sup> Supreme Court judge Ranjana P. Desai at the conference of All India Federation of Women Lawyers in Chennai said that the criminal justice system has failed to protect the

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<sup>43</sup> <http://www.panthic.org/articles/5394>

<sup>44</sup> [http://articles.timesofindia.indiatimes.com/2011-03-08/chennai/28667863\\_1\\_women-prisoners-tiruchi-jail-wardens](http://articles.timesofindia.indiatimes.com/2011-03-08/chennai/28667863_1_women-prisoners-tiruchi-jail-wardens)

<sup>45</sup> [http://articles.timesofindia.indiatimes.com/2012-04-22/delhi/31381841\\_1\\_jail-warden-tihar-jail-jail-staff](http://articles.timesofindia.indiatimes.com/2012-04-22/delhi/31381841_1_jail-warden-tihar-jail-jail-staff)

<sup>46</sup> P. Pugalenth vs The State of Tamil Nadu on 17 July, 2009





rights of women, who are often victims of violence and discrimination.<sup>47</sup> Soni Sori a 35 year old adivasi schoolteacher, warden and mother, subjected to sexual violence while in custody in the Dantewada police station in Chhattisgarh under directions of the Superintendent of Police (SP) says in her letter to the Supreme Court advocate that “After repeatedly giving me electric shocks, my clothes were taken off. I was made to stand naked. SP was watching me, sitting on his chair. While looking at my body, he abused me in filthy language and humiliated me.”<sup>48</sup>

iv) Inaccessibility of Legal Services:

Women prisoners are not getting satisfactory legal aid in the prisons. Inaccessibility of legal services is a major problem which needs to be resolved. Final Annual Report 2008-2009 of National Human Rights Commission provides that in most of the jails visited in India, there is need to strengthen the legal aid system so that the qualified lawyers are provided to all those who cannot afford their services.

Unawareness about the law and procedure amongst the women prisoners is also a major problem. According to “Progress of the World’s Women” a report by the Assistant Secretary General of United Nations Women, uneducated women have lack of awareness about the judicial system and their rights.<sup>49</sup> Women, due to their ignorance, are not even getting the benefit of proviso to Section 437 Cr.P.C, according to which they may be released on bail even in non-bailable cases. Bail, in non-bailable offences, is not a matter of right of the accused person. Section 437 of the Code of Criminal Procedure envisages the provision as regards bail in case of non-bailable offences, which may or may not be granted depending on the discretion of the court. But proviso to this provision exempts women, and empowers court to grant bail to a woman irrespective of the gravity of the crime.<sup>50</sup>

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<sup>47</sup> <http://Woman & Child Prisoners/The Hindu States Tamil Nadu Judge discrimination against women a global phenomenon.htm>

<sup>48</sup> <G:\Woman & Child Prisoners\Delhi - All India Meet on Women Prisoners and Custodial Violence, Mar 31 at Sanhati.htm>

<sup>49</sup> <http://www.youthkiawaaz.com/2012/02/the-deplorable-condition-of-women-prisoners-in-india/>

<sup>50</sup> <http://legaljunction.blogspot.in/2011/11/proviso-to-section-4371-of-crpc-is-bail.html>



## **5. CONCLUSION AND SUGGESTION:**

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 undertrial 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.

In the case of pregnant women prisoners they can be granted bail and in case the children are dependent on the women prisoners, their mercy application should be considered sympathetically and released accordingly. Most of the women prisoners are not aware about the complexity of judicial process. Legal awareness programmes should be launched on war footing in the jails so that women prisoners should be made aware of their legal rights and about the complexity of judicial process. Sufficient lady doctors should be appointed in the prisons. 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 undertrial prisoners and for this purpose the procedure of plea bargaining can be adopted. Lok Adalats should be organised frequently. Fast track courts should be established to reduce the burden of undertrial prisoners over jails. The Prison Act 1894 which regulates the prison administration is too old and it requires to be substantially amended in the present scenario. Panels of visitors should be appointed on a permanent basis to all prisons as recommended and emphasised by National Expert Committee on women prisoners and apex court in various observations.



Succinctly, it can be said that the goal or aim behind awarding the punishment to the women offenders should be the reformation and the rehabilitation of women prisoners and for achieving this goal the jail manuals should be prepared in consideration with minimum standard of human rights.