

# **State of Women Prisoners in India: Human Rights Violation and Judicial Response**

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## **Abstract**

Prisoners are human beings and the mere fact that they are behind bars does not mean that they cease to have human rights or deserve to be ill-treated. Unfortunately, the reality is that once a person enters prison, he or she practically loses all human rights and is conveniently forgotten by the society. This is especially true for the poor and the weaker segments of the society. And if such a prisoner happens to be a woman, then the horror simply gets amplified. It is not that there is dearth of laws or rules to protect women prisoners. But still their pathetic situation presents a serious human rights problem. Custodial and sexual violence against women in prisons has been exposed on a number of occasions. This paper focuses on the problems faced by women inmates in prisons. It looks at judicial pronouncements to evaluate how the judiciary has come to the rescue of such women to ensure that they have rights not just on paper but also in spirit. The need of the hour, it is argued, is to make prisons a more humane place rather than a living hell.

**Keywords-** Prisoners Human Rights, Women Prisoners, International Dimensions, NCRB

## **1. Introduction**

At the best of times, prisons are the worst of places to be in. Across the world, they evoke images that can scare the toughest of human beings. And across the world, prisons are synonymous with human rights violations and other evils. Indian prisons are no exception to this. They are dreadful places at best, with insensitive and unsympathetic officials as well as inmates of various hues. The condition of Indian prisons is appalling. They suffer from overcrowding, lack of adequate infrastructure, poor medical aid, lack of basic amenities and are a breeding ground for hardened criminals. India as a country suffers from

various ills. Prisons are microcosms of all that is wrong in the society. Indian prisons are simply placing where all that is wrong with India simply gets amplified and becomes worse. What aggravates the problem is the fact that prison system in India is largely opaque. Often the inmates are subjected to inhuman conditions. They are expected to remove the cloak of their humanity upon entering prisons. In the case of women prisoners, this simply means entering a dark, gothic and cruel world where assaults can be made on each and every aspect of their humanity, their existence. Women prisoners in India face some of the most aggravated forms of depravation and rights violations.

As per the report released by NCRB (2015) in India, there has been an “increasing trend in the number of women prisoners from 3.3% of all prisoners in 2000, 3.9% in 2005, 4.1% in 2010 and 4.3% in 2015 were women”.<sup>1</sup> According to the latest report of NCRB (2019)<sup>2</sup> there are approximately 20,000 women prisoners across the country out of which only 15 States and Union Territories have separate jails for them. The report further highlights that “Uttarakhand has no separate jail for women and has the highest overcrowding for women in prisons – more than 170 per cent. It is followed by Chhattisgarh (136 per cent) and Uttar Pradesh (127 per cent)”. Thus, a majority of women prisoners are kept in women enclosures of general prisons. It also mentions about the percentage of undertrial women prisoners which is 65.8 per cent.

Prison management in our country is regulated by the Prisons Act, 1894, and Prison Manuals/Regulations framed by various States. Prisons are included in Entry 4<sup>3</sup> of the State List (List II) under the Seventh Schedule to the Constitution of India. Thus, as per our Constitution, States have the legislative competence with respect to laws governing prisons. Interestingly, the Prisons Act, 1894 has largely remained unchanged except for some minor amendments introduced by the States, from time to time, to suit their local conditions. However, change in the pitiable condition has come with the efforts of judiciary

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<sup>1</sup> Government of India, “Women in Prisons-India” 5 (Ministry of Women and Child Development, June, 2018).

<sup>2</sup> Available at: <https://indianexpress.com/article/india/20000-women-in-jails-only-18-in-women-only-jails-6575583/> (last visited on December 29, 2020).

<sup>3</sup> Under “Prison Reformatories, Borstal Institutions and other Institutions of like nature and persons detained therein”, Entry 4, List II-State List, Schedule 7, Constitution of India.

and human rights activists. Some positive initiatives on part of the Central and State governments have also made things a little better than they were. International Organizations have also pitched in to ensure that prison inmates do not lose their basic rights simply because they are put behind the bars.<sup>4</sup> It is true that prisoners, especially convicts, are sent to prisons since their presence outside would be dangerous or will not be desirable for several reasons but simply because a person is legally stripped of some of his rights does not imply that the person ceases to be a human being. In this context, this paper tries to evaluate how the judiciary has tried to improve the pitiable conditions of women prisoners in India. First, rights of prisoners are discussed generally since they will be applicable to men as well as women. Later the emphasis shifts to women prisoners.

## **2. Overview of Human Rights Protecting Prisoners**

Human beings are entitled to certain basic rights by virtue of the very fact that they are born as humans. These inherent rights are at the core of our existence and are rooted in the dignity of humans. The ‘justness’ of a society can be judged by the guarantee of human rights of its members. An inherently unjust society is the one that deprives all or part of its members an existence befitting human beings. No one can and no one should be denied their human rights.<sup>5</sup> Human dignity has been recognized as the quintessence of human rights.<sup>6</sup> Human rights have been defined as “those minimum rights which every individual must have against the State or other public authority by virtue of his being a member of the human family, irrespective of any other consideration”.<sup>7</sup> These rights are considered to be essential for all round development of human individuals and for the full realization of their potential. These rights are also something that ought to be protected. Against the collective might of society or the state, an individual may feel weak and helpless. In such scenario, it

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<sup>4</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners, Approved by the Economic and Social Council by Its Resolution on 13 May 1977, *available at*: <http://www2.ohchr.org/english/law/pdf/tokyorules.pdf>. (last visited on October 21, 2020).

<sup>5</sup> L.J. Macfarlane, *The Theory And Practice Of Human Rights* 7 (Maurice Temple Smith, London, 1985).

<sup>6</sup> J.S. Verma, *The Universe of Human Rights* 3 (Universal Law Publishing Company, New Delhi, 2006).

<sup>7</sup> D.D. Basu, *Human Rights in Constitutional Law* 5 (Wadhwa Book Company, New Delhi, 1994).

is important that he or she have rights which the society or state shall not encroach upon- rights which trump over everything else.

Coming to convicted prisoners, it is true that men and women who are convicted of any offence deserve to be punished for their deviation. Their liberty is validly curtailed. They are denied the full set of rights that are available to a normal and free person. Yet such men and women do not cease to be human beings. All their rights are not snatched. Therefore, one can argue that,

*“It is no more open to debate that convicts are not wholly denuded of their fundamental rights. Prisoners are also entitled to certain human rights, even if they are in prison. However, a prisoner’s liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty to him is then all the more substantial. Conviction for a crime does not reduce the person into a non-person whose rights are subject to the whims of the prison administration”.*<sup>8</sup>

Prison implies a system of punishment and a sort of institutional segregation of convicts, under-trials and suspects during the period of trial and a prisoner is defined as a person who is confined in prison under the order of a competent authority.<sup>9</sup> Crime and criminals cannot be completely eliminated from any society. Hence, institution of prison is essential for any country.<sup>10</sup>

However, prisoners and convicts need a second chance, a chance to reform and a chance to introspect over what has been. This is particularly true of first-time convicts, those who are convicted for minor offences, women convict who may have been victims of circumstances rather than slaves of criminal or deviant instincts. For this reason, prisons have to be made safer and more conducive to reformation of prisoners rather than being laboratories for producing hardened miscreants. Torture and all forms of custodial violence

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<sup>8</sup> S.K. Sarkar, *Public Interest Litigations and Public Nuisances* 731 (Orient Publishing Company, New Delhi, 2<sup>nd</sup> edn., 2006).

<sup>9</sup> Model Prison Manual, 2003, rule 1.25.

<sup>10</sup> Prof. P.V. Paranjape, *Criminology and Penology* 383 (Central Law Publishers, Allahabad, 2009).

should be avoided. The prison authorities should bear the responsibility for any excesses committed on prisoners while they are in prisons. The excesses have attracted legislative attention, media scrutiny and most importantly, judicial wrath.<sup>11</sup>

### **3. International Dimension: Rights of Prisoners**

In the aftermath of the Second World War, human rights became an international concern. This was reflected in the charter of the United Nations. Since then, international human rights law has become a substantive part of the international law. Although international law lacks the sort of sanctions that municipal law has, yet the norms of international human rights law are protected by the various bodies of the United Nations and the inter-governmental organizations.<sup>12</sup>

A number of Human Rights Conventions and Declarations under the aegis of the United Nations have stressed the importance of rights of prisoners. These treaties and declarations apply to male as well as female prisoners. The rules thereunder cover, inter-alia, the procedure of arrest, trial and interrogation. Some of the examples include, the Universal Declaration of Human Rights, 1948<sup>13</sup>; the International Covenant on Civil and Political Rights, 1966<sup>14</sup>; the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1977<sup>15</sup>; the Basic Principles for the Treatment of Prisoners, 1990<sup>16</sup>; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988<sup>17</sup>; the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975<sup>18</sup> and the United

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<sup>11</sup> Ms. Nirmala Devi, “Judicial Approach towards the Protection of Prisoners in India: An Analysis” *Criminal Law Journal* 60 (2011).

<sup>12</sup> For example, the General Assembly, the Security Council, the Economic and Social Council, the Secretariat, the International Court of Justice, the United Nations Trusteeship Council etc.

<sup>13</sup> See, arts. 3, 5, 8, 10, 11(1), 12.

<sup>14</sup> See, arts. 7, 9, 10.

<sup>15</sup> See, rule 31, 30(2), 10, 16, 20, 22, 33, 37, 79, 71, 77, 78.

<sup>16</sup> See, rule 1, 5, 6, 7, 8, 10, 9.

<sup>17</sup> See, principle 4, 6, 10, 21.

<sup>18</sup> See, arts. 3, 4, 6, 8, 11, 12.

Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), 2010.<sup>19</sup>

The most important treaty with regard to torture in the prison is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. It is worth noting that India has still not ratified the same.

#### **4. National Dimension: Rights of Prisoners**

A human being's liberty is the most sacred aspect of his or her identity and the same cannot be curtailed without the due process of law. Modern humanist jurisprudence and the naturalist approach would require that there should not just be a procedure but a fair and reasonable procedure for curtailment of liberty. Also, once liberty is curtailed there is absolutely no justification for resorting to physical or mental torture or any other kind of ill treatment of the prisoner who was and continues to be human. This should be kept in mind at the time of treatment of prisoners in the machinery of prison system.<sup>20</sup>

During the colonial rule the idea of prisoner's rights was never evolved since that suited the interest of the colonial power. However, post-independence, the Constitution of India has recognized a number of basic human rights as part of the fundamental rights as well as directive principles. For fundamental rights at least, one can approach the judiciary in case of violations. The ambit of basic rights has been enlarged thanks to the liberal interpretation given by the judiciary while dealing with Article 21. Some of these rights are available to the prisoners even though their liberty is curtailed by the fact of their incarceration.<sup>21</sup> The Indian Penal Code makes it an offence to voluntarily cause hurt or grievous hurt to extort confession.<sup>22</sup> Certain procedural safeguards are also available to the prisoners under other laws such as the Criminal Procedure Code.<sup>23</sup>

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<sup>19</sup> The rules lay out "rules for the treatment of women in prison and prescribe certain non-custodial measures for women offenders".

<sup>20</sup> Banshi Dhar Singh, "Judicial Response to Violation of Prisoner's Rights" July-Dec *Civil and Military Law Journal* 85-88 (2007).

<sup>21</sup> The Constitution of India, 1950, arts. 14, 19, 20, 21, 22, 39A, 72 and 161 continue to operate for prisoners.

<sup>22</sup> Indian Penal Code, 1860 (Act 45 of 1860), ss. 330 and 331.

<sup>23</sup> The Code of Criminal Procedure Act, 1973, ss. 54 (1), 303, 309 (1).

The Prisons Act, 1894 also ensures certain rights to the prisoners. It provides for proper accommodation for prisoners<sup>24</sup>; sufficient clothing and bedding to be supplied as may be necessary<sup>25</sup>; medical examination<sup>26</sup>; separation of prisoners-where male prisoners under the age of twenty-one are separated from the other prisoners who have arrived at the age of puberty<sup>27</sup>; separation of non-convicts from convicted prisoners<sup>28</sup>; prohibition over solitary confinement<sup>29</sup>; provision for hospital or proper place for the reception of sick prisoners<sup>30</sup> etc.

With respect to the superintendence and management of prisons, there is the Model Prison Manual, 2003. Its main objective was to review the laws, rules and regulations governing the management of prisons and treatment of prisoners. It ensures the following rights to the prisoners- every prisoner shall be given three meals a day according to the scales prescribed<sup>31</sup>, every prisoner shall have reasonable facilities for seeing or communicating with his/her family members, relatives, friends and legal advisers<sup>32</sup> and provisions shall be made for vocational training of prisoners.<sup>33</sup>

With the passage of time a need was felt to update the rules framed in 2003. Therefore, the Expert Committee was constituted which after extensively reviewing the existing rules came up with the new draft of rules named as Model Prison Manual, 2016. These rules provide guidance to prison authorities and aims to bring uniformity in the rules, laws and regulations governing prison and rights of the prisoners across the country<sup>34</sup>. Some of the essential features of the Model Prison Manual, 2016 include “prison computerization,

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<sup>24</sup> The Prisons Act, 1894, s. 4.

<sup>25</sup> *Id.* s. 33.

<sup>26</sup> *Id.* s. 24(2).

<sup>27</sup> *Id.* s. 27(2).

<sup>28</sup> *Id.* s. 27(3).

<sup>29</sup> *Id.* s. 29.

<sup>30</sup> *Id.* s. 39.

<sup>31</sup> *Supra* note 9, rule 6.07.

<sup>32</sup> *Id.*, rule 8.01.

<sup>33</sup> *Id.*, rule 14.02.

<sup>34</sup> Model Prison Manual, 2016.

special provisions for women prisoners, focus on after care services, and prison inspections etc.”<sup>35</sup>

## **5. Need for Special Protection of Women Prisoners in India**

It is clear that there are a number of international treaties as well as national laws relating to the management of prisons and the treatment of prisoners. It is pertinent to mention here that rights of women prisoners are not specifically recognized as such in either the major international instruments or in any national legislation. Prisoner’s rights are recognized only generally- the rights are not gender specific. However, it must be noted that women have special needs when they are put behind bars. They are especially susceptible to sexual violence- by other inmates as well as by prison authorities. They can be and have been subjected to custodial violence, custodial rape and other kinds of torture. They are especially vulnerable because they are women. A woman prisoner is abandoned by her near and dear ones sooner than a male prisoner. Also, a woman prisoner may have special needs relating to her children or other dependent members of the family.

The existence of horrifying prison conditions of female prisoners is a global problem. According to the UN Special Rapporteur Report “women in prison are raped by inmates and guards, forced into prostitution, touched in sexual manner during frisks and required to wear revealing prison uniforms”.<sup>36</sup> The report further mentions that there are some instances where “women and men are housed together in the same facility or even in the same jail cell, which increases the risks of abuse and is contrary to international standards”.<sup>37</sup>

In India, it was only after the recommendation of the All India Jail Reforms Committee 1980, under the Chairmanship of Justice A.N. Mulla, that the rights of female prisoners assumed importance under the Criminal Justice Administration. The committee recommended various rights for women prisoners so as to improve their situation. The

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<sup>35</sup> *Id.* at 4.

<sup>36</sup> United Nations General Assembly Sixty-eight session, “Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences” 12 (August 21, 2013).

<sup>37</sup> *Ibid.*



Committee's basic objective was to review the laws, rules and regulations from the perspective of the overall aim of protecting society and rehabilitating offenders. It suggested some rights, as "right to human dignity, right to basic minimum needs, right to communication, right to access to law, right to meaningful and gainful employment, right to be released on the due date".<sup>38</sup>

Interestingly, one of the earliest mentions of rights of female prisoners can be found in the writings of Kautilya. He had suggested that separate enclosures should be provided for male and female prisoners.<sup>39</sup> It also points to the fact that prisons are not a modern phenomenon but existed in ancient and medieval India as well. However, it has been noted that, before the British period, there was no concept of a separate prison for males and females in India.<sup>40</sup> In fact our Prisons Act also goes back to British India.

As late as in 1979, at the Conference of Chief Secretaries of all the States and Union Territories, a need was expressed to create separate facilities for the care, treatment and rehabilitation of women offenders. The work of the Mulla Committee has already been noted. It had suggested various rights that should be ensured to the prisoners in general. For female prisoners, it was suggested that women inmates should be kept separate from the males and women staff should be deployed for them. It also suggested reformatory programs for the rehabilitation of the women prisoners. An extensive study was also conducted by the National Expert Committee on Women Prisoners. This Committee was set up under the Chairmanship of Justice Krishna Iyer in 1987. In its recommendation, the Committee re-emphasized the construction of separate prisons for female prisoners. It also suggested that proper care should be provided to the baby born of a woman inmate where the baby is born in jail. It also made recommendations regarding a provision for nutritious diet for the mother and the child.

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<sup>38</sup> Available at: <http://www.scribd.com/doc/21248287/Mulla-Committee-on-Prisons> (last visited on October 12, 2020).

<sup>39</sup> Amarendra Mohanty and Narayan Hazari, *Indian Prison System* 18-19 (Ashish Publishing House, Delhi, 1990).

<sup>40</sup> Indira J. Singh, *Indian Prison: A Sociological Enquiry* 36 (Concept Publishing Company, Delhi, 1979).

It must be noted that, in India, sexual violence committed on a woman prisoner in the prison is an offence. Rape committed by jail authorities is considered to be an especially heinous category of offence.<sup>41</sup> There are several reasons for the pitiable state of women prisoners and the need for extra safeguards for them. In a patriarchal society, the male dominance continues right into the prison cells as well. This is one reason that women are not safe behind the bars. They could face difficulty not only with regard to other convicts but also with regard to prison authorities. The gender disadvantage and discrimination that women face outside is only worsened during imprisonment. The deplorable condition of women prisoners has been highlighted by Kiran Bedi in her book<sup>42</sup> where she stated;

*“Here women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self-respect they reached the prison with. It must be considered some sort of miracle that these women managed to cling on to their sanity, despite the overwhelming odds they faced”.*<sup>43</sup>

Interestingly, the Ministry of Home Affairs and the Ministry of Human Resource Development (Department of Women and Child Development) constituted a Committee on Empowerment of Women (2001-2002). The Committee visited several prisons in order to study the conditions of Women in Detention.<sup>44</sup> The Committee, inter alia, noted that,<sup>45</sup>

- Instead of separate prisons, jails merely had separate enclosures for women.
- The majority of female detainees were under trials that had spent more time in jail than the time required under the maximum sentence for the offence for which they were being tried.

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<sup>41</sup> *Supra* note 22, s. 376C.

<sup>42</sup> Kiran Bedi, *Its Always Possible: Transforming One Of The Largest Prisons In The World* 88 (Sterling Publishers Pvt. Ltd., New Delhi, 2002). As cited in Manika Kamthan, “Women prisoners in India: tracing gender gaps in theorising imprisonment” Vol. 6 Issue 6 *Forensic Research & Criminology International Journal* 470 (2018).

<sup>43</sup> *Ibid.*

<sup>44</sup> For instance, Central Prison (Arthur Road Jail) Mumbai, Tihar Jail (Delhi), Model Jail (Chandigarh), Central Prison (Orissa), Presidency Jail (Kolkata), Nari Bandi Niketan and District Jail (Lucknow).

<sup>45</sup> Government of India, “Report: Committee on Empowerment of Women” 14-17 (Ministry of Home Affairs and Ministry of Human Resource Development, Department of Women and Child Development, 2001-02).

- Special Courts/Lok Adalats were not being held for expeditious disposal of cases for under trials and for petty offences.
- General conditions relating to food, lodging, clothing, recreation etc. were far below standard and needed considerable improvement.
- Most of the jails had only a part time Medical Officer for women.
- Counselling cells for women were also not there.
- Facilities for vocational training, elementary education, legal literacy, free legal aid, etc. were lacking at most of the places;
- There was no segregation of the ill prisoners.
- The female jails/enclosures were not managed by women personnel by male staff.
- Some of the inmates were unaware of the grounds of their arrest.
- Young women prisoners were exploited by the jail staff for immoral purposes.

Another research conducted in the field highlighted the other problems which include “inequitable treatment, neglected medical care, fear of social stigma, problem of rehabilitation, lack of sensitization regarding female prisoners, poor infrastructural facilities, lack of separate prisons, lack of counselling, further chances of exploitation, corruption and extortion, lack of legal aid”.<sup>46</sup>

A study conducted by Bureau of Police Research and Development (BPR&D) reveals that a majority of women prisoners in Punjab jails “do not have adequate sleeping arrangements and have to sleep on the floor. There have been reports of inadequate heating/cooling arrangements in the cell”.<sup>47</sup> The Ministry of Women and Child in its report of 2018<sup>48</sup> gave a detailed account of the appalling conditions of women prisoners from lack of hygiene to absence of adequate health, education and vocational facilities. The report further

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<sup>46</sup> Prof.(Dr.) Deepti Shrivastava, “Problem of Female Prisoners in Indian Prison” July-Sept *Indian Police Journal* 19-28 (2006).

<sup>47</sup> *Supra* note 1 at 13.

<sup>48</sup> *Ibid.*

highlights the instances of sexual abuse and violence faced by women prisoners across the country.<sup>49</sup>

## **6. Role of Judiciary in Protecting Rights of Women Prisoners in India**

The judiciary has emerged as a savior of the rights of women prisoners. The landmark decision in *Maneka Gandhi v. UOI*<sup>50</sup>, led to the interpretation that the “procedure established by law” in Article 21 of the Constitution implies not just any procedure but a ‘just, fair and reasonable’ procedure. This ushered in an era of positive judicial creativity and expansion of rights.

In *M.H. Hoskot v. State of Maharashtra*<sup>51</sup>, the Court held that the right to legal aid is of the ingredients of fair procedure<sup>52</sup>. In *Babu Singh v. State of U.P.*<sup>53</sup>, the Apex Court recognized right to bail as a part of ‘personal liberty’ under article 21 of the Constitution. In *D.K. Basu v. State of West Bengal*<sup>54</sup>, court laid down guidelines to be followed in all cases of arrest or detention. In *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*<sup>55</sup>, the Court gave the following direction:

*“All women and children who are in the jails in the state of Bihar under ‘protective custody’ or who are in jails because their presence is required for giving evidence or who are victims of offence, should be released and taken forthwith to welfare homes or rescue homes and should be kept there and properly looked after”.*<sup>56</sup>

In *Sheela Barse v. State of Maharashtra*<sup>57</sup>, court gave detailed directions regarding improvement of the conditions in police lock-ups and providing adequate protection to those arrested, especially women. In *Christian Community Welfare v. Govt. of*

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<sup>49</sup> *Id.* at 14-21.

<sup>50</sup> (1978) SCR (2) 621.

<sup>51</sup> (1978) 3 SCC 544.

<sup>52</sup> See also, *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 81; *Khatri v. State of Bihar* (1981) SCC (Cri) 228; *Sheela Barse v. State of Maharashtra* (1983) SCC (Cri) 353.

<sup>53</sup> (1978) 1 SCC 579.

<sup>54</sup> AIR 1997 SC 610.

<sup>55</sup> AIR 1979 SC 1369.

<sup>56</sup> *Ibid.*

<sup>57</sup> (1983) SCC (Cri) 353.

*Maharashtra and Ors.*<sup>58</sup>, the High Court issued various directions to prevent and check custodial violence. It also enumerated the procedure to be followed by Police while arresting any person, procedure after the arrest is made and the procedure relating to detention of women prisoners.

Custodial torture, especially custodial death, is recognized as a serious violation of human rights.<sup>59</sup> The case of Mathura who was subjected to rape by police officers while in the police station (even though she was not technically imprisoned) is too well known.<sup>60</sup> The aftermath of the case saw some major shaking of our legal system.<sup>61</sup> However, custodial violence and custodial rape continue unabated in our prisons. It has led the Supreme Court to remark that such incidents cannot be allowed in a free and democratic society.<sup>62</sup> Time and again the judiciary has condemned such acts and has come down heavily on those who are guilty. The NHRC has also issued directions in respect of custodial violence and rapes. All the cases of such death have to be reported within 24 hours and the post mortem has to be video filmed. Also details regarding the model post mortem report etc. have been specified.<sup>63</sup>

The Supreme Court has also looked into one of the major problems faced by women prisoners regarding maintenance of their children. In this regard the court in *R.D. Upadhyay vs. State of A.P.*<sup>64</sup> observed:

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<sup>58</sup> AIR 2004 SC 7.

<sup>59</sup> See, For example, *Raghubir Singh v. State of Haryana*, AIR 1980 SC 1087, *Shakila Abdul Gafar Khan (Smt.) v. Vasant Raghunath Dhoble and Anr.* (2003) 7 SCC 749; *Nilabati Behera v. State of Orissa and Ors.*, AIR 1993 SC 1960.

<sup>60</sup> *Tuka Ram and Anr. v. State of Maharashtra*, AIR 1979 SC 185; the Supreme Court in a judgment exhibiting extreme insensitivity, lack of humanness as well as a blind adherence to the black letter of law allowed the rapist cops to go scot free. It completely overlooked the fact that lack of overt resistance from the woman could be signs of helplessness and meek surrender rather than of willingness. The judgment reeks of the patriarchal mindset of our society and was strongly criticized.

<sup>61</sup> See, for example the Open Letter written by academicians from, inter-alia, the University of Delhi, available at: <http://pldindia.org/wp-content/uploads/2013/03/Open-Letter-to-CJI-in-the-Mathura-Rape-Case.pdf>. (last visited on November 21, 2020).

<sup>62</sup> See, *Mehboob Batcha & Ors. v. State Represented by Supdt. of Police* (2011) 7 SCC 45.

<sup>63</sup> NHRC Document on Custodial Deaths/ Rapes, available at: <https://nhrc.nic.in/sites/default/files/sec-1.pdf>. (last visited on November 24, 2020).

<sup>64</sup> (2007) 15 SCC 337.

*“Women undertrials/convicts if living in jail with their children, the jail conditions are not conducive and state has an obligation to look after welfare of children and to provide for social, educational, and cultural development of children”.*<sup>65</sup>

## **7. Conclusion and Suggestions**

Female prisoners have special needs. They need to be treated with sensitivity and they do not give up their humanity or rights simply by entering the prison. It may be difficult to completely remove all the problems associated with prisons in India and in particular with women prisoners. This is because of lack of funds and infrastructure. But it is more so because of lack of will of those who can bring about change. Indian Police lacks sensitivity and is a brutal force- a lethargic, corrupt and inhuman remnant of the British Raj. To further aggravate the problem, India refuses to ratify the Convention against Torture. India must ratify this convention. Apart from this, a number of other steps also need to be undertaken to improve the lot of women prisoners.

The first important task before us is to modernize and sensitize our police force. This requires training of the lowest hierarchy of officials and not just the ones at the top. The change should come in the attitudes of the Constables who form majority of the force and lie at the bottom of the pyramid. There should be induction of more women in the force, especially at the lower levels. Moreover, custodial violence and custodial rape should be severely punished.

Secondly, Government probably needs to release more funds to upgrade our prisons and make them better for women inmates rather than merely engage in lip service in the name of women rights. These funds should be used to improve the condition of Indian Prisons. They should have proper toilets and other basic facilities. Surprisingly, even in Delhi, this is not ensured as the author of this paper found out during a visit to a jail.

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<sup>65</sup> *Ibid.*

If possible, separate women prisons comprising of all women staff should be there. This will also increase employment and improve our human rights record. No male officer should be appointed in such prisons.

And the most important task is to create awareness. Time and again, researcher after researcher and report after report have dedicated numerous pages to these suggestions and the need to create awareness. But we are still an incredibly huge distance away from being anywhere minutely close to our goals. It must be made mandatory for designated senior advocates as well as law school students to participate in camps for increasing legal awareness and to visit prison cells to educate the inmates about their rights. Also, such activities should not be merely ornamental in nature but of a substantial variety. Legal aid work should be given more respect by the Bench and the Bar. And students, academicians and lawyers who time to spreading awareness and working for betterment of women prison inmates should be given suitable incentives.

Lastly, the laws should be properly and strictly applied. It is one thing not to have laws but to have them and yet not to apply them is a greater injustice. A lot of our problems will cease to exist if law was given primacy over anything and everything else.