



# THE TORMENTING PLIGHT OF WOMEN INMATES IN INDIA: AN INDEPTH STUDY

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## ABSTRACT

In the broad landscape of the Criminal Justice system in India, the issue of 'Women Inmates' frequently covered under the shadows of cultural talk as a marginalized bunch. On the periphery of public consciousness, the everyday challenges and deplorable condition of women prisoners often overlooked, these issues may lost in the midst of the expansive discussion and catchy headlines surrounding the crime condition, incarceration, criminal justice reforms etc, which are able to gain more public attention than any other important issues prevailing in India. This article sheds a light on the plight of the women prisoners exploring the reasons behind female criminality, multifaceted issues that exacerbate the vulnerability of the women prisoners inside the prisons, enlarges over the national and international rights of these strugglers, few judicial interpretation related to their rights and finally draws a conclusion out of the discussion.

**Key Words:** Women inmates, prisoners, human rights, criminal justice, incarceration

## INTRODUCTION

*"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones."<sup>1</sup>*

**Nelson Mandela**

Every person has basic human rights which cannot be taken away in any form. Living behind the bars do not mean ceases to be a human being, even behind the bars all the inmates deserves a humane treatment. Though the reality is very gruesome in nature and in most of the countries of the world the ground reality is unbearably distressing, India is no exception of that condition. The grim condition inside the Indian prisons related overcrowding, poor health condition, lack of basic facilities; lack of medical treatment, custodial violence can turn anyone's head. The case of female prisoners in that dreadful situation is worse than of male prisoners. In India, the women prisoners though contribute very less population than males but the situation of them is really pathetic and need immediate amelioration.

To underline the deplorable condition of women inmates kiren Bedi wrote in her book that:

*"Here women prisoners are 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*

<sup>1</sup> The Nelson Mandela rules, available at: <https://www.unodc.org> (last visited on 22 February, 2024)

*some sort of miracle that these women managed to cling on to their sanity, despite the overwhelming odds they faced.”<sup>2</sup>*

According to the NCRB Report of 2022 the prison statistics shows that out of 5, 73,220 prisoners in Indian prisons 5, 49,351 were the male prisoners and 23,772 were female prisoners, the other prisoners (transgender prisoners) were 97 in number.<sup>3</sup> The NCRB in its annual publication of ‘Prison Statistics in India’ in the year 2021 presented the state/UTs wise actual number of women prisoners and the available capacity of these prisons also. The report showed that, against the available capacity that is 6767 inmates, these women jails hold 3808 population.<sup>4</sup>

## OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM AND WOMEN INCARCERATION IN INDIA

Since the very beginning of the human existence crime became integral part of the society. The nature of the individual was very self-centric, man usually prefers the pleasure over pain, and guided by their instincts as ‘Bentham’ said. In this way, what would be right or wrong he was not able to differentiate and at that time in the primitive society there was no law to control the conduct of the individual, but with the passage of time the development took place in the society, people collide with each other, grows as a individual and came to know about the rightness of his conduct and the evil consequences he might faced by if committed any wrongful conduct. This was the era when ‘law’ came to control the human conduct.

The Indian Criminal Justice System passed through series of stages, starting from the oldest written law ‘Manusmriti’ or the ‘laws of manu, ‘Dharmasutra’s’, ‘Niti Shastras’ etc. were base of criminal adjudication process in the ancient India after this era, the ‘Sultanate period’ and ‘British Period’ also contributed in shaping the criminal jurisprudence in India. With the ‘Codification of law’ the modern criminal adjudication starts its way. The modern Criminal justice system is combination of different agencies such as police, prosecution, courts, judges, jails or prisons etc. These agencies are inter-related with each other and with their combined work it is thereby possible to protect the society from any wrongdoers and to maintain law, order, and peace in society that is actually the main objective to establish this criminal jurisprudence.

Jails or Prisoners are those independent bodies that are situated to incarcerate and punish the law-breakers, the criminals. These bodies’ basically works as a social regulation where the offenders are kept for reformation. The reformation is for the purpose of making the criminals eligible for the society, by correcting their behavior and removes any intention of breaking law in future. That’s why it is most essential duty of the prison authorities to treat the offenders with basic humane way that the purpose of reformation must fulfill.

In India there are only 34 women jails out of total 1,330 prisons as per the recent Prison Statistics Report conducted by NCRB in 2022.<sup>5</sup> It is therefore very facile to say that mostly the women offenders are locked up in common jails. The numbers of women inmates dramatically increased in few years, as per the reports between 2014-2019 years span the women inmates increased by 21.7% that is from 3,001 to 3,652 in women jails and by 10,775 that from 14,680 to 16,261 in regular jails.<sup>6</sup> The condition inside the prisons are very harsh, there are no special facilities available to these women inmates and they have to faced multiples complexities related to their health and sanitization. As per the committee report that was appointed by Supreme Court of India, headed by former High Court judge, Justice Amitava Roy, on the ‘condition of women prisoners in Indian jails’ that:

<sup>2</sup> Kiren Bedi, It’s always possible: One Woman’s transformation of Tihar Prison (Himalaya Institute of Press, India, Illustrated edition, 2007).

<sup>3</sup> Women in Prisons available at: <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/women-in-prisons> (last visited on February 21, 2024).

<sup>4</sup> Lok Sabha Unstarred question no. 2084, published by- Government of India, Ministry of Home Affairs available at: <https://sansad.in> , (last visited on February 21, 2024).

<sup>5</sup> Supra note 2.

<sup>6</sup> How India treats women in prison available at: <https://cjp.org.in> (last visited on February 16, 2024).

*“Women in incarceration suffer the brunt of imprisonment far worse than their male counterparts, especially with regard to access to basic facilities”<sup>7</sup>.*

The most significant concern for women incarceration is mainly related to health and well-being. The issues concerning access to health care facilities such as- reproductive health care, mental health care support etc. are very limited or not available in Indian prisons. These female inmate faced abuse and negligence which not only exacerbate their mental health but long time separation from their families, children can develop a feeling of isolation among them. These types of experiences violate their basic human rights and also hinder their capacity to heal as well re socializes after they got release from jails.

## CAUSES OF FEMALE CRIME

To understand the reasons behind female crime requires a nuanced assessment of multiple socio-economic, psychological and foundational factors. Where there is no obvious explanations regarding female criminality, several common themes rise up out from different researches conducted.

1. **Poverty and Socio-economic Challenges:** The factors like economically marginalization effects badly and became a significant driver for women to commit offences. They may indulge themselves in criminal act as a mean of survival or as a sort to address financial crisis faced by their families. Lack of social support, employment opportunities, poverty, improper education can make them more vulnerable and also pushed them to indulge in illicit activities.

2. **Discrimination and Inequality:** Women from marginalized group of people, includes those are from ethical and religious minority groups, LGBTQ+ individuals etc. often faced social and systematic inequality. The limited opportunity in different resources, employment issues, barriers to education, discrimination, limitation in social mobility expanded their involvement in crime by exacerbates their vulnerabilities.

3. **Substance Abuse and toxic addiction issues:** In this modern time one of the prevailing reasons behind female crime is substance abuse and addiction issue. Alcohol and drug dependency can lead to the criminal activities like prostitution, drug-trafficking, murder, theft etc.

4. **Mental Health Issues:** Different types of mental health issues such as- depression, anxiety, Post traumatic stress disorder (PTSD) etc. perpetuating the cycle of criminality among women. Long time untreated mental illness can equally contribute to the engagement of criminal activities among females.

5. **Relationship Dynamics between families:** Abuses from partners, exploitation and manipulation in relations, breach of trust, constant emotion shock and sufferings, domestic violence can also indulge females in crime. The unhealthy and dysfunctional family environment exacerbates the scope of female impulsiveness lead to illicit acts.

The main causes of female crimes as underlined by different researcher in their studies are mentioned as follows:

a) **Pollak** in his book<sup>8</sup> had emphasis upon different biological reasons as a cause of female criminality. He said that the effect of hormonal changes in different stages of female life like during pregnancy period, menstruation period, and menopausal period may contribute in aggressive acts. Major factor such as abnormal cravings, mood swings, impulsiveness create frustration among female can lead towards commission of crime. He claimed that because the women are able to acquire a greater skill at ‘deceit and cunning behavior’ mainly through sexual socialization their contribution found more in crimes like abortions, offences against children, murders by poisoning etc.

<sup>7</sup> Women prisoners must be treated better available at: <https://www.deccanherald.com> (last visited on February 16, 2024).

<sup>8</sup> O.Pollak, *The Criminality of Women* (University of Pennsylvania Press, Baltimore 1950).

b) **Lombroso and W. Ferrero**, in their study<sup>9</sup> underlined the definition and characteristics of female criminals. They defined female criminals as ‘masculine, unfeminine, forceful, jealous, filled with revenge attitude, and deficient with maternal emotions.’ Lombroso (1899) portrayed female offenders as ‘biologically dysfunctional’. Further he characterized the female offenders “masculine” whereas normal women are “feminine”. He stated that a female offender commits crime more dangerously and heinously than men criminals.

c) **Adler** in his study<sup>10</sup> mentioned that female criminals are mostly indulging themselves in crime like juvenile law breaking prostitution, drug addiction etc. Basically he wanted to point down that through this type criminal activities women takes their primary step towards the “female liberation movement and female assertiveness”.

d) **Marxist Smith**, in her article “Women, crime and deviance”,<sup>11</sup> in the year 1980 has mentioned that “In capitalist Social Structure, female commit crime as a result of their socialization process”. ‘Marginalization’ is one of the root causes that induce a female to more be more crime prone because they commit crime to satisfy their economic need.

e) In India different empirical studies are conducted upon the female crimes that basically outlined the unhealthy relationships and unstructured family environment as a reason for crimes among females. According to **B. R. Sharma** (1963) the uneasy relationship among family members and controversial inter personal husband wife relations, husband’s extra marital affairs, dissatisfaction or denial of basic needs like security, affection etc. create tension and frustrations among females often led them towards criminal acts. Further, **Rani Bilmoria** in “A Socio-Demographic Study of Women Prisoners” (1980) and **Sohoni Neera** kuckreja in “A Socio-demographic study of women prisoners” (1986) admitted ‘family maladjustment’ or ‘role conflict in family’ as a root cause of female criminality.<sup>12</sup>

By addressing multiple hidden factors driven females to commit a crime, society can pursue an effective way to make more equitable law enforcement framework that concentrates upon prevention of crime, mediation and rehabilitation process.

## RIGHTS AVAILABLE TO FEMALE INMATES

Female inmates suffered innumerable pain and hardship inside the prisons. To provide them basic humane treatment and protect them from any kind of torture while in custody, there are several rights available to them.

### 1. Rights available to women prisoners under National Law:

**Rights under the Constitution of India:** The Indian Constitution doesn’t hold any kind of special or specific rights for the women prisoners but it provides a number of legal rights as well remedies that can be used by both men and women inmates.

- a) Article 14 of the Indian Constitution guarantees the equal protection of laws to the women in India.
- b) Article 15 forbids any kind of discrimination on the ground of sex.
- c) Article 21 of the Constitution provides the basic and most important human right ‘Right to life and personal liberty’.

<sup>9</sup> Cesare Lombroso and William Ferrero, The Female Offender (The William Library, New York 1958) {Originally published in 1899}.

<sup>10</sup> Freda Alder, Sisters in Crime: The Rise of the New Female Criminal (McGraw- Hill, New York 1975).

<sup>11</sup> Ram Ahuja, Sociological Criminology 114 (New Age International Publishers Limited, New Delhi 1996).

<sup>12</sup> Ram Ahuja, Criminology 142 (Rawat Publication, Jaipur, India, 2021).

d) Part IV of the Indian Constitution contains the 'Directive principles of state policy' which are specifically included for the purpose to give direction to the state to ensure that all the people in India must get economic and social rights.

e) Article 39-A added by 42<sup>nd</sup> Constitutional Amendment Act in 1976 guarantees the 'Free Legal Aid' thereby confirms the equal justice concept in India.

**Rights under the Indian Penal Code 1860:** To protect the rights of the prisoners, the Indian Penal Code, 1860 uphold certain offences as punishable. Section 330 and 331 of this code prescribes punishment for the offence of 'voluntarily causes hurt and grievous hurt' for extortion of any kind of confession. Section 354 deals with punishment of offence related to 'outrage the modesty' of women. The section 376 C of the Indian Penal Code, 1860 deals with offence of 'Sexual intercourse by a person in authority' that prescribes punishment of five years of imprisonment with fine.

**Rights under Code of Criminal Procedure 1973:** There are several rights specifically mentioned for the women prisoners in this code encompassing the different stages of criminal justice system such as arrest, trial and detention. Section 46(4)<sup>13</sup> directs that, no women can be taken into the custody after sunset and before sunrise, except some exceptional situation with prior permission of first class magistrate. Section 51(2) provides that a women police officer can only has the authority to search the women with utmost decency. Section 54 of CRPC gives direction that women accused should only examined by or under the supervision of women medical officer, if not available then by a registered female medical practitioner.

**Rights under Prisoner's Right Act, 1897:** Section 27(1) of this Act states that where there is a common prison for men and women inmates, the women inmates must kept in 'separate building or separate parts of same buildings'. This is to them from 'seeing or conversing or holding any inter-course with the male prisoners'. Section 31 of this Act provides protection of certain prisoners from private sources. Further section 33(1) talks about supply of clothing and bedding to the civil prisoners and who are acquitted in criminal cases

2. **Rights available to women prisoners under International Law:** India is a signatory of many international conventional and also gave its ratification to secure equal rights for all the women inmates.

a) Article 3 of the 'Universal Declaration of Human Rights' (UDHR) enunciates the 'right to life, liberty and security of person'.

b) 'No person shall be subjected to torture, cruelty or inhuman torture' this right is mentioned under Article 5 of UDHR.

The 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 their inherent dignity of the human persons."

c) India ratified the 'Convention on Elimination of All Forms of Discrimination against Women' (CEDAW) in the year 1993. Article 12(1) of which specified for better health care system for women. This article directed the state to ensure to provide better health care measures and appropriate services during pregnancy, post natal period, wherever required must give free services, and also to take necessary care to supply adequate nutrition during pregnancy and lactating phases of women.

d) Rule 53 of the 'Standard Minimum Rules for the treatment of Prisoners' mentioned that the female inmates must be guarded by the female officers only. Section 53(2) and 53(3) respectively mention that the supervision of women officers will be required in case any men enter into a women cell for requirement. Also that the mentally ill female prisoners must keep in another cell separately.

<sup>13</sup> Added by criminal procedure Amendment Act, 2005.

## THE PROBLEMS FACED BY FEMALE INMATES IN INDIAN PRISONS

As per the reports submitted by the 'Prisons Statistics India', over the last decade the female population in Indian prisons has increased steadily, the population climbing from 15,037 in 2010 to 17,834 in the year 2015 and further in the year 2022 it reached 23,772 population. The data shows a substantial increase of female inmates that is 58.09% from 2010 to 2022.<sup>14</sup> With increasing population the female inmates faced multiple challenges inside prisons in India encompassing various aspects of their lives such as physical aspects, mental aspects, safety and security, social and economic well being, access to the justice etc. The problems are as discussed below:

**A. Over-crowding and poor living condition:** This is one of the pervasive problems faced by world-wide prisoners including inmates living in Indian prisons affecting both the male and female inmates. Large population of under trial prisoners, delay in criminal justice process, infrastructural issues, limited expansion and increasing numbers of arrested detainees are the main factors contributed in over population in Indian prisons. For women, this may lead to a cramped situation with no sufficient means of movement. Over population reduces the quality of living condition exacerbates the problems such as insufficient toilets, lack of privacy, poor ventilation, risk of increase of infectious diseases etc. The overcrowded cell violates the basic human rights of the inmates.

As per the National Crime Records Bureau (NCRB) data, at the end of 2021 there were total 22,918 female inmates in India, while the capacity of 32 existing women jails was only for 6,767 prisoners. Where the report further declared that among 22,918 prisoners, 1,650 prisoners are with their children inside the jail premises.<sup>15</sup> This overcrowded jails lead to a suffocated life for women inmates.

**B. Poor spending on welfare and basic health care facilities:** Poor spending on the welfare and basic health care facilities is another major problems faced by prison inmates. The situation of women prisons are in its worst because of the poor spending. As per the recent reports the expenditure on prisoners reduced to Rs. 113 per day in 2020 from Rs. 119 per day in 2019. The expenditure expenses remained less than 8% covering the medical, welfare activities, and educational programs.<sup>16</sup>

In the latest analysis of 'Prison Statistics India 2021' by 'India Justice Report' (IJR) Valay singh, the project leader of IJR noted down that the average spend upon a prisoner has gone down from Rs. 41,319 in the year between 2020-2021 to Rs. 38,028 in the year between 2021-2022. That is Rs. 104 on a per day basis. Where there are 16 States/UTs including 10 large and mid-sized states, spent below Rs. 100.<sup>17</sup>

The National Crime Records Bureau in 2005 reported that in India, the prison authorities spend an average of Rs. 10,800 per year per inmate covering expenses related to food, clothing, vocational, educational, welfare activities, medical expenses etc.<sup>18</sup>

**C. Sanitization and Hygiene related issues:** Female inmates in India mostly belong to the age group of 18-55 that is basically menstruation age group. Therefore a special sanitization and hygiene is required for these female inmates and the jail authorities are duty bound to provide the same. As per the reports given by Commonwealth Human rights Initiative (CHRI) during their visit to a Haryana prison, the highlighted that most of the female inmates are unaware about the fact that jail authorities are duty bound to provide them sanitary

<sup>14</sup> Female Prisoners face gender bias, are overcrowded, live in polluted conditions and suffer custodial rape, available at: <https://www.siasat.com> (last visited on February 20, 2024).

<sup>15</sup> State of women prisons in India: Inadequate space or absolute lack of it available at: <https://www.thestatesman.com> (last visited on February 17, 2024).

<sup>16</sup> Jail Mail: Ten things you should know about Indian Prisons CHRI's Analysis of Prison Statistics India 2020 available at: <https://www.humanrightsinitiative.org> (last visited on February 17, 2024).

<sup>17</sup> India doesn't spend even Rs.100/day on a prisoner: how access to medical care can be improved? Available at: <https://www.mid-day.com> (last visited on February 21, 2024).

<sup>18</sup> Major Problems of prison system in India available at: <https://timesofindia.indiatimes.com> (last visited on February 17, 2024).

napkins during their menstruation days. They either buying by paying money from jail canteen or mostly manage by using old used cloths.<sup>19</sup>

The inadequate bathroom facilities, water scarcity in toilets, small numbers of bathrooms using large population are generally major hygienic issues other than above mentioned problem. Where the Model Prison Manual, 2016 set a minimum standard of 135 liters of water must available to an inmate on daily basis as per his or her needs, depending on specific hygienic needs especially for the women inmates during menstruation, the ground reality is not that easy and most of the jails are lacking in providing the basic facilities related to sanitization and hygiene.

**D. Health Issues in Indian Prisons:** Over population, poor living conditions lack of access to health care facilities led to multiple health issues. Diabetes, Diarrhea, chronic morbidity, TB and HIV diseases are mostly found among the prisoners in India. Overpopulated and unsanitary living area holds a significant health risk to the women prisoners. Moreover the issues like Poor ventilation and unhygienic living condition increases the chances of infectious diseases and skin diseases. This living condition inside the prisons poses a major threat to the safety and security of women inmates. Furthermore, lack of privacy, safety concerns create fear and tension among female inmates that led to anxiety, depression and make them vulnerable.

Mental health problems are another common disease that found among prison inmates. In the year 2018 a study was published in the 'Indian Journal of Social Psychiatry' that revealed, 'Schizophrenia' is a common disease found suffered by prison inmates, it further followed by depression, post-traumatic stress disorder (PTSD), and sleeplessness etc. These mental health problems are mostly suffered by undertrial prisoners.<sup>20</sup>

As per the report given by the 'Official Prison Statistics India' (PSI) 1,879 men and women prison inmates died in the year 2021 reported as 'natural causes' deaths. With the increasing numbers prison population the deaths in prison has also increased from 1,424 in 2016 to 1,879 in the year 2021.<sup>21</sup>

According to the National Crime Record Bureau (NCRB) released 'Prison Statistics Report' 2018, 1,639 persons in Indian prisons were died due to the reason listed as 'natural causes' out of total numbers of deaths. The data showed that 'natural causes' death included deaths of 411 inmates due to 'heart-related ailment', 231 inmates died due to 'lung-related ailments', 103 died due to 'tuberculosis', 80 died by reason of 'cancer', 72 died due to 'liver related ailments', 58 died due to 'kidney related ailments', 46 inmates died by reason of 'HIV related issues'.<sup>22</sup>

**E. Custodial Violence:** Custodial violence is considered as greatest obstacle in the way of democracy. The major challenges in custody for female inmates includes gender biasness, risk of custodial rape, abuse and violence, that further exacerbate due to the shortage of female staffs and lack of women correctional facilities. One of the despicable and thrilling events among all types of custodial violence is 'custodial rape'. The over population in common prisons poses a potential risk of custodial violence, especially custodial rape for the female inmates. The Prison Statistics India Reports 2022 clearly shows that 82.2% of women inmates are in common prisons which marks as major threat to their safety issues, heightened their vulnerability.<sup>23</sup>

Women inmates are unsecured and totally helpless inside the prisons. In an article by 'The Wire' that was basically part of the series of 'Barred-The Prison Project' few conversations of prison inmates may cause heartache to anybody. The female inmates inform "The Wire" that their condition is not only where they are vulnerable and others are watching them but also they have no control over how their body will be treated. One

<sup>19</sup> Problems faced by Female Accused in Prisons available at: <https://www.legalbites.in> (last visited on February 17, 2024).

<sup>20</sup> Mental Wellbeing Behind the Bars: How Indian Prisons Struggle With Mental Health available at: <https://www.thequient.com> (last visited on February 16, 2024).

<sup>21</sup> Deaths in India's Prison available at: <https://www.dristiias.com> (last visited on February 17, 2024).

<sup>22</sup> Poor Medical Care for Prisoners Explain why Number of Custodial Deaths is Only Rising available at: <https://thewire.in> (last visited on February 18, 2024).

<sup>23</sup>Supra note 12.

of the inmates named Meena says whenever they were back from their court dates, they had to strip completely in front of the female staffs and they were completely free to put their hands everywhere in the body of the female inmates. Another inmate named Leela says that they are forced to take off their underwear and to spread their legs even in the time of their menstruation.<sup>24</sup>

**F. Separation from Families and Children:** It is most difficult for the female inmates to get separated from their children and families. This separation may be a significant source of their distress. Long time separations, lack of visitation opportunities expand outrage their family bonds and hinder the scope of the rehabilitation.

There are also various other problems faced by the female inmates such as lack of rehabilitation and reintegration support after their release from jails, legal aid and access to justice is another big issue for women inmates. Stigmatization and the discrimination basically the societal challenges, lack of educational facilities, shortage of female staff, accommodation etc. To address various issues suffered by the women inmates in India requires a comprehensive reforms encompassing over the areas related to prison administration system, measures to improve everyday living condition, basic medical care facilities, forestall custodial violence and abuse and to promote equal justice, support the reintegration etc.

## ROLE OF JUDICIARY IN PROTECTION OF RIGHTS OF WOMEN INMATES IN INDIA

The Supreme Court of India reiterated that:

*“..there could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity and human sympathy.”<sup>25</sup>*

The Indian Judiciary played a very important role in respect of securing the rights of prisoners. In numbers of cases judiciary uphold the rights of women inmates and emerged as a true savior of human right principles.

The landmark case of *Sheela Barse v. State of Maharashtra*<sup>26</sup>, the apex court gave a comprehensive list of directions to improve the condition in police lock-ups and to provide safeguards to the detainees, especially women inmates.

In another historic case of *R.D. Upadhyay v. State of Andhra Pradesh and Others*<sup>27</sup>, the Supreme Court underlined the gender specific needs and the rights of the women prisoners. After inquiring about the grown up children with their mother in the prisons, the apex court further laid down certain minimum standards of providing food, medical care, education, clothing etc. to the mother and the child as a matter of right.

The case of *Christian Community Welfare Council of India v. Government of Maharashtra*<sup>28</sup> was another landmark case enlarging the scope of rights of women prisoners. The Bombay High Court in this case held that women prisoners should be arrested only in presence of lady constables and no arrest of women should take place ‘after sunset and before sunrise’. Further the court also directed to formulate a special committee by the state government for looking after the police accountability towards the prisoners and pen down few special provisions for women prisoners to protect them from sexual abuse or any kind of custodial tortures.

<sup>24</sup> Buzz of a Mosquito...But with the sound of Grief: The Lives of India's Women Prisoners available at: <https://thewire.in> (last visited on February 18, 2024).

<sup>25</sup> SC order in Re-Inhuman Condition in 1382 prisons dated 5<sup>th</sup> February 2016. W.P.(C) No.406 of 2013

<sup>26</sup>Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96.

<sup>27</sup> R.D. Upadhyay v. State of Andhra Pradesh and Others, WRIT PETITION (CIVIL) NO 559 OF 1994.

<sup>28</sup> Christian Community Welfare Council of India v. Government of Maharashtra, 1996 (1) BOM CR 70.

The Supreme Court of India, in the case *D.B.M. Patnaik v. State of A.P.*<sup>29</sup>, declares that fundamental rights of the arrested person cannot be suspended due to mere detention of that person.

In another landmark case *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*<sup>30</sup>, was another historic judgment where the Indian judiciary manifested its role in protection of human rights. The Court declares that:

*“All women and children who are in 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.”*

The case namely, *State of Maharashtra v. C.K. Jain*<sup>31</sup>, was related to the incident of custodial rape held in a police station. The Supreme Court of India ruled in this case that the rape victim is no doubt a competent witness under Section 118 of the Indian Evidence Act and no competent witness will be required for corroboration of her testimony. Rape allegations are not false, it will be presumed. Further, it was also held that it should be understandable that delay may happen on the part of the victim for making complaint against a police officer.

The judiciary is crucial for ensuring the rights and dignity of the incarcerated women. It ensures the security of their rights by interpreting the laws, by maintaining fair trials and due process, alongside defends the arbitrary detention, custodial abuse and violence, promotes the access to justice. The judiciary through its supervisory and adjudicatory duties marked its way as a protector of the human rights since long time.

## COMMITTEE REPORTS AND POLICY FORMATION

In respect of prison reforms and rehabilitation ‘Justice Krishna Iyer Committee’ and ‘Justice A.N Mulla Committee’ played an unprecedented role in Indian history. Both committees were published their reports in the year 1983 and 1987 respectively and gave number of recommendation regarding protection of women prisoners rights. The primary objective of ‘Mulla Committee’ was to look into various rules, laws and regulations regarding safeguards of the society and to bring reformation among offenders. The report highlighted multiple issues and problems regarding living condition, security issues in prison etc. while giving comprehensive list of suggestion that is still relevant in the present situation also. On the other hand ‘Justice Krishna Iyer committee’ reviews the report given by ‘Mulla committee’ and further emphasized on women prisoners’ safety. This committee gave a broad list of suggestion for security and protection of women prisoner. This committee discussed about the need of more women staffs in Indian prisons with the increase numbers of women prisoners, to treat these women prisoners a gender sensitive approach is also necessary and most importantly there is an urgent need of that prison system where women inmates would be placed in a prominent position for their safety.<sup>32</sup>

In 2005 the committee under the chairmanship of the Director of General, ‘Bureau of Police Research and Development’ (BPR&D) used the reports submitted by ‘Justice Mulla Committee’ and ‘Justice Krishna Iyer Committee’ and suggested several new recommendation in this regard. This committee also drafted a ‘National Policy on Prison Reforms and Correctional Administration, 2007’.

Most recently the ‘Justice Roy Committee’ (2018) shed a light on the overcrowding issues among undertrial prisoners in Indian prisons, highlighted the condition of female prisoners, transgender prisoners and talked about correction homes, recommended various remedial measures also.

<sup>29</sup>D.B.M. Patnaik v. State of A.P, AIR 1974 SC 2092.

<sup>30</sup>Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, 1979 AIR 1369.

<sup>31</sup>State of Maharashtra v. C.K. Jain, AIR 1990 SC 658.

<sup>32</sup>Prison Reforms: A Distant Reality available at: <https://www.legalserviceindia.com> (last visited on February 20, 2024)

The 'Model Prisons Act, 2023' has prepared by the Ministry of Home Affairs(MHA) that is basically brought to overhaul the prison administration system in India by replacing the British- era law 'Prisons Act, 1894' mainly for the purpose of reformation and rehabilitation of the prison inmates.<sup>33</sup>

## CONCLUSION

The famous quotation given by Oscar Wilde in his play 'A Women of No Importance' in 1893 that:

*“Every saint has a past, and every sinner has a future”*

This quotation reveals a meaningful truth that accepted universally. No person in this world can be a flawless being. Right and Wrong both are inherent in human nature. Each step taken by an individual be it a right step or wrong driven him to a new experience in life path. Through the journey of life and experiences everyone learns and grows, and this process continues. Every individual experience different complexities in their lives, their way of handling those situations are also different, with their unique steps they can make mistakes but that mistakes cannot be everlasting which moulds their life in sadness, pain and failures.<sup>34</sup>

The sole aim of the prison system is basically to ensure the society crime free, to correct the offenders, to rehabilitate them and transform them into law abiding citizen. Reformation and rehabilitation offers these prisoners a second chance in their life. Therefore dreadful treatment and denial of human rights can never be a way to achieve these goals.

With the above theoretical discussion it can be said that Indian prison system is suffering from multiple challenges that are actually hinders the fair and equitable justice system. Where the prisoners are literally fighting for their basic human rights to live inside the prisons and outside the prison, the social rights activists and NGOs are becoming vocal in demand of justice for these prisoners, the genuine objective of prison system is getting lost. The plight of the women prisoners is not merely a concern within the Indian criminal justice system but it reflects a deep pattern of inequality within the system. From the moment of their arrest the women inmates suffered harsh challenges, the gender based violence and systematic inequalities faced by these prisoners led them far away from getting justice.

To draw a conclusion it can be said that the rights of the prisoners mentioned in the pages of the statutes and convention should convert into reality. Also there is an urgency of thrown away of the stereotypes and prejudices that are ingrained at every level of the criminal justice system. By adopting a gender sensitive approach and fighting against the challenges of structural inequalities it will be possible to bring changes within the system in coming future. Furthermore, by confronting the systematic injustice, putting apart the inequalities, listening and honoring the voice of the strugglers and by treating them with dignity and humanity, offering them rehabilitation and reformation, the true essence of prison system would be valid.

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