Chapter 4

Punishment, Treatment and Judicial
Trends Towards Women Offenders

“Hate the Crime and Not the Criminal”
Mahatma Gandhi

1. Introduction

Some of the major questions which are engaging the attention of penologists today are whether the traditional forms of punishment should remain the exclusive or primary weapons in restraining criminal behaviour or should be supplemented and even replaced by a much more flexible or diversified combination of measures of treatment of a reformative, curative and protective nature. Punishing the offender is primary function of all civil States. The drama of wrong doing and its retribution has indeed been an unending fascination for human mind. In fact it has been the theme of much of the world’s greatest literature since ages. However, during the last two hundred years, the practice of punishment and public opinion concerning it has been profoundly modified due to the rapidly changing social values and sentiments of the people.¹

Imprisonment is one of the methods used to handle the convicts in such a way to protect and prevent them to commit further crimes for a specific period of time and also to prevent others from committing crime on them out of vengeance. The concept of punishing the criminals by imprisonment has recently been changed to treatment and rehabilitation with a view to modify the criminal tendency among them.²

In many countries of the world, Sex is not a mitigating factor at least on paper while penalizing women especially if the offences committed by them show the determination to reject totally the sex roles they are required to play in patriarchal society. In this world of gender equality women should be treated at par with men as regards equal offences committed by them. Women are

¹ Prof. N.V Paranjape, Criminology and penology, (2006), p. 203
competing men in the criminal world, are emulating them in all the crimes and in
even some surpassing them, so any rationale behind awarding of lenient penal
treatment to them is a weak one indeed. But Eugene Mc Laughlin takes the
middle path and opines that paper justice would involve giving similar penalties
for similar offences and real justice would involve taking the consequences of a
penalty. For example according to her real justice would consider the likelihood
that a child might suffer much more from a mother’s imprisonment than that of
his father’s so concept of criminal justice is not necessary synonymous with
social justice. 3

India has a written constitution and codified many central and state laws.
Its Judiciary is of the highest integrity. The Supreme Court of India is a shining
symbol of the great faith of our people in our judiciary and to our great pride the
Supreme Court has earned high praise all over the world. The Indian Legislature
and Judiciary make constant efforts to bring about improvements in courts and
dispense justice speedily. Though at times, some decisions have appeared
controversial, the ultimate verdict of our people is and hopefully will always be
that their constitutional rights are safe in the hands of our Supreme Court and
High Courts. 4

2. Historical Development Regarding punishment For Women
offenders

Punishment for women offenders from ancient India to Modern India and
their prison life and its alternatives and very importantly role of judiciary while
penalising women offenders can be discussed as such:

2.1 Punishment for Women Offenders in Ancient India

Numerous scholars have contributed to the revelation of crime and
punishment in ancient India. The early Vedic Period followed by Rigveda, the
later Vedic period followed by the combination of all four Vedas, while the late

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3 Uma Tripathi, “Punishment for Female Offenders with Special Reference to Effect of Imprisonment and
4 Mrs. K. Vijaya Laxmi and Dr. Radhika Yadav: Necessities of Gender Balances in Indian Judicial System.
Cri. LJ, Vol: 97, part 1157, p.71 (May 2010)

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Vedic period was dominated by the Vedang, Smriti. Early Vedic period was dominated by Aryans who had emigrated from Tibet plateau. Turanian Bacaricca, Pamir and other parts of the world. These communities used to administer the justice system at the family level. The family was based on the patriarchal system. The father used to dominate the family and therefore he was adjudged as the ruler of his family. His authority was final and after his death, power was transmitted to the eldest son. With the passage of time, the administering justice was based on the hierarchal basis viz. village (gram); community (vis); people (jana) and country (rashtra). The rashtra was normally ruled by the king (Rajan). Kingship was normally hereditary. This system was known as Monarchy. The main duties of monarchical system were to protect the life and property of people, maintain peace, and defend rashtra against external aggression, administer justice and punish the guilty. The jurisprudence of Ancient India, which was essentially Hindu-ruled, was shaped by the concept of ‘Dharma’, or rules of right conducted as outlined in the various manuals explain the vedic scriptures such as ‘Puranas’ and ‘Smritis’. The king had no independent authority but derived his powers from ‘dharma’ which he was expected to uphold.⁵

Ancient India was not a safe place to live, many group of thieves existed already at the time of Buddha (6° centuries BC). They are bandit from generation to generation, robbing and killing their victims like the thugs did later. Written in the 4° Century BC by Kautiliya, minister of the king Chandergupt Maurya, the “Arthshastra” is a treatise on the part of ruling and one of the main Indian book ever written: it recommends :- cutting off the right hand for pick pocketing or theft, chopping off one hand and leg for kicking preceptors and using royal coaches, blinding by poisonous ointments for Sudras pretending to brahminis or for slandering the king. These punishments are same for men and women; there were also different form of deaths, death with torture for murder in a quarrel, death by impaling for theft of royal animals, death by drowning for breach of dams and reservoirs, death by poisoning for women, who set fire her house. There were also offences for which culprit was killed without being torture

⁵ Dr. Madhurima, Women, Crime and Prison Life, (2009), p.76
applied. Moreover reduction to slavery was inflicted on men and women in case of adultery. In practice many mutilations and death penalties (except those due to treason) were reduced to fines for women offenders⁶.

Adulterous women were not exempted from punishment. An unwilling woman however was not punished but had to undergo a few rigorous penances to get rid of the sin in case she had illegal relation with men of equal caste, but Brahaspati pointed out that for intercourse with a man of the order even an unwilling women had to be abounded and put to death.⁷

Smriti laws seem to have appreciated clearly the difference in nature and gravity of sexual crimes involving woman belonging to another man (married woman adultery) and unwilling woman and a willing woman. Connections with a woman who is not one's wife (excepting certain categories of fallen woman), is a thing of which the smriti laws positively disapproved and as such make it a punishable offence. But they clearly distinguish between the offences involving the woman of three categories stated above.

Another striking feature of the smriti law is the liability of the adulteress to be punished. Gautama states that the King should get an adulterous devoured by dogs in a public place, if the adulterer is of a caste lower than her.⁸ The head of a brahmana adulterer is to be shaved, and her body to be anointed with butter; She is to be placed necked on a black donkey and to be taken round along the high road. According to Vasistha the woman becomes free thereby.⁹ Manu departs from this rather lenient treatment. If a wife violates the duty which she owes to he lord, the king shall cause her to be devoured by dogs in a place frequented by many.¹⁰ The prescription of punishment is a clear recognition of the principle that such offences are no long era private affair between individual, but a matter between individual and state, a matter with which the whole society is concerned.

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⁷ Sukla das, Crime and Punishment in Ancient India, (1977), p.64
⁸ Gautama Dh. S.XXIII-14
⁹ Vasista Dh.S. XXI. 3
¹⁰ Manu, VIII. 371
How far capital punishment was imposed on women is not clearly known. Yama prescribed abandonment instead of disfigurement and death sentence even when women were guilty of adultery. Brahaspati was much stauncher in this respect and according to him female adulterous were to be punished more severely. Though half of her punishment should be inflicted on the man; a woman who instigated the man should either have her nose, lips and ears cut and be paraded in the street and finally plunged in to water or to torn to pieces by dog. Extremely wicked woman were also put to death by being gored by the horn of bulls.\(^{11}\)

Confession played a significant role in mitigating the gravity of punishment. As Narada held, the perpetrators of a wrong act or of a crime should be let off with one half the prescribed punishments due for his/her offence provided he/she admitted the charge of his/her on accord. On the other hand, if he/she denied the guilt of being examined in a court of justice and was convicted afterward by means of an ordeal or other modes of proof, he/she should suffer a heavier punishment\(^{12}\).

Insanity, age, physical and other disabilities were also considered before any infliction, Manu prescribed simple whipping for insane, women, infants’ poor and sick. Concessions were also granted to old and pregnant woman.\(^ {13}\)

Kautilya prescribed that a jail should be constructed in the capital, provided with separate accommodation for men and women kept apart (thus the principle of classification for men and women was in existence in the jails during ancient period), and well guarded at the entrances, (since there is no mention about jails in other parts it is evident that very few persons were sent to jail to undergo punishment). He further provided that among the duties of the Nagarka (jail officer) was to let prisoners out of the jail on the day of festival, of the birth, constellation of the king and on the full moon day (of every month). Those persons who were young, very old, suffering from diseases and helpless or those who were charitably disposed might pay the fines. Those who were not in a

\(^{11}\) Ibid, p. 66  
\(^{12}\) Manu, VIII, 314-318 Nar app-46-47.  
\(^{13}\) Ibid
position to pay fines were jailed. Prisoners were released from jail (as a favour) on the conquest of a fresh territory or on the coronation of the crown prince or on the birth of a prince.\textsuperscript{14}

### 2.2 Punishment for Women Offenders in Colonial India

In the second half of 19\textsuperscript{th} century, certain dissatisfaction becomes apparent in the records of British men and women who concerned themselves with crime and its punishment in colonial India. Broadly speaking, there was a growing perception that there were serious problems with the manner in which the colonial state punish female offenders. While some observes questioned whether imprisonment in colonial jails was practically punishing, others expressed alarm that such incarceration was actually counterproductive that instead of reforming and rehabilitating women criminals, British- Indian Prisons contributed to their further demoralisation. When we sort through the hand wringing over women convicts that marked Indian prison administration in the 1860s, two fairly consistent patterns become evident, one is the most basic mechanism through which long-term women convicts were to be reformed were vocational training and a comprehensive segregation, the isolation of the offender not only from the families, on-criminals and free society, but also from men and other female criminals. These processes were expected to transform convicted women into productive, orderly and modest members of the labouring class. This was the meaning of reform and the goals of the female wards and women’s prisons of colonial India. The other pattern is schemes for labour education and segregation came into conflict with each other faltered the agents of reform proved half hearted and unreliable. The convicts themselves were often quite indifferent to the agenda of rehabilitation.\textsuperscript{15}

In the late 18\textsuperscript{th} and early 19\textsuperscript{th} centuries Indian convicts were transported to South-east Asian countries largely to supply labour requirement and to develop infrastructure to cater to the interest of British empire. The British on the other hand viewed transportation as an exceeding harsh punishment because they felt

\textsuperscript{14} Dr. Madhurima, \textit{Women, Crime and Prison Life}, (2009), p.79

\textsuperscript{15} Satadru sen, “ The female jails of colonial India”, \textit{The Indian Economic and Social History Review}, (2002), p. 39, 4
that it invoked not only the fear of unknown, but also that of transgressing caste taboos. This made transportation as an extremely effective deterrent to crime and secondly, it helped them meet the cost of imprisonment, which at that time did not involve productive use of imprisoned convict’s labour.16

A committee constituted of C.J Lyall and Major A.S Lethbrige suggested that transportation of more women to Andaman penal settlement, transportation of female term convicts sentenced for 7 years and upward. Their objective was to give more facilities to self supporters to marry the female convicts. The female convicts were too segregated from the male convicts in jail. The primary purpose of incarceration of women offenders in Andaman Island was to do something for rehabilitation of male offenders. The very objective to punish criminalized women was to provide wives for male convicts, as a disincentive to homosexual relationship between men and an incentive to a politically manageable domestically.17

2.3 Punishment for Women Offenders in Modern and Civilized World

Even in the modern and civilized world many Saudi Arabian States still sentenced deviant females to flogging and that too for petty offences. In Riyadh one women was publicly hanged with three men for the offences of drug peddling and yet in another case again in Riyadh a 60 lashes punishment was prescribed for a female journalist who allegedly happened to be involved in a television show in which Saudi man publicly talked about sex though due to growing global human rights awareness the Saudi King had on humanitarian grounds waived off her punishment.18

Similarly 14 years old Azar Bagheri was charged in Iran with adultery and sentenced to be stoned to death. For the past four years she has been languishing on death row while courts waited for her to reach maturity. Buoyed by an

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18 The Times of India. Feb 7, (2010)
International Campaign against Iran’s death sentence for women convicted of adultery her lawyers hope the court will show mercy. The Iranian Embassy in London informed that the stoning would not go ahead though the campaigners feared that Bagheri’s execution could still be carried out by another method. In a case in 2009 British women Sally Antea (44) and Maria Pearce(40) were jailed for adultery in Dubai whereas a South African women was jailed for 3 months in UAE of her being convicted on sex charges.

In America in Virginia after over 100 years 41 year old Luis had been awarded death sentence convicted on the heinous charge of killing husband and stepson. The Supreme Court had declined the appeal to stop her execution. She was executed by lethal injection. Rekha Kumari (41) an Indian-origin women who stabbed her two teenage daughters to death at her house in Cambridgeshire was sentenced to 33 years in prison after she was found guilty of the brutal murders.

Again in the case of *Ashok Kumar Vs. The State of Delhi Administration*, the allegation against the accused were that she was having illicit relations with co-accused and killed her husband in the room of hotel by striking him with stone. The High Court enumerated as many as eleven circumstantial evidence against the appellant and spelt out the case to be ‘rarest of rare’ one. The Supreme Court held the view that appellant was rightly convicted of the offence under section 302, I.P.C. as the chain of circumstances fully established the guilt of the accused. However, on the point of sentence, the Apex Court observed that the act of striking the deceased with a handy stone and causing the death cannot be said to be so cruel, unusual or heinous which would warrant death penalty. Therefore, the Court commuted the death sentence of the appellant to that of imprisonment of life.

In Pakistan, one Asia Bibi, a Pakistani Christian women, who is currently lodged in Sheikhupura prison, in the Punjab province of Pakistan, awaiting the

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19 Iran Teen Jailed till her Stoning Age: The Times of India, July 12, p.5, (2010)
23 AIR 1996 SC 265.
judgement of the High Court in Lahore on her appeal against the death sentence given to her in a blasphemy case in 2010\textsuperscript{24}.

3. **Criminal Justice process towards Women offenders**

Criminal justice process is the entire system of criminal prevention, detection, apprehension, adjudication and punishment. It includes all those agencies such as police, correctional institutes, courts and legislatures that are responsible for enforcing criminal laws. The right to life and liberty guaranteed in the constitution is the primary source of criminal law. This right is then translated into ‘Indian Penal Code’, ‘Criminal Procedure Code and evidence act’ and also in Local and Special laws (non-code legislation). The Directive principles of State Policy set down the responsibility of the state to provide for free legal aid where required (for reason of economic and other disabilities). This is to ensure equal justice for all citizens and to further the guarantee of equality before the law, as provided in Article 14 of the Constitution. There are also departmental rules, special manuals and standing orders to guide the functioning of the courts, as well as the police, prisons and social welfare departments. Relevant court decisions, too, are integrated into these regulations, as they identify gaps in the system-situations not specifically defined for whatever reason.\textsuperscript{25}

Attitude of Judiciary towards women offenders from ancient India to modern India can be viewed as under:

3.1 **Judicial Attitude towards Women Offenders in Ancient India**

According to the legal writers there were times when people dutiful and habitually veracious, when there existed neither law-suits nor problem arising out of hatred, selfishness etc. as such golden time of the vague past became gradually a matter of remembrance, various complications had set into make the society conscious of evil and its remedy. Judiciary was undoubtedly a machinery

\textsuperscript{24} *The Sunday Tribune Spectrum*, March 17, p.4, (2013)

\textsuperscript{25} Dr Madhurima, *Women, crime and prison life*, (2009), p.44
to uphold the triumph of truth against evil, and justice against injustice.\(^{26}\)

Even in Ancient time’s distress, calamity, age and sex of the person and also the state of mind were considered before summoning in court of justice. Women of Nobel family were usually not summoned to the court personally except in grave circumstances but independent women who earned their livelihood or were unchaste or ex-communicated or prostitutes, could be summoned.\(^{27}\)

Out of nine ordeals, ordeal of balance was generally given to the women offenders, minor, old and other disabled persons. The person performing the ordeal was twice weighed on a balance. If she/he was found lighter than the previous weighed he/she was considered innocent. If they weighed higher then they were regarded as guilty.\(^{28}\)

While imposing the punishment, several factors were to be considered like time and place of occurrence, the intention, capacity, and learning, age, sex, caste etc. of the criminal. So it is evident that at the time to Sex is main factor while awarding punishment. And women offenders are treated leniently than male offenders by judicial administration.

### 3.2 Judicial Attitude towards Women Offenders in Modern India

Judicial administration is one of the most important functions of the state. It makes the people conscious about the existence of the State by the checking the criminal activities and settling various disputes arising out of civil and criminal breach of conduct. The Judiciary has been rightly defined, “as the body of officials whose work consist in the resolution of complaint whether between subject and subject or between State and subject. That the laws of the State have been broken in some particular.”\(^{29}\)

One of the most controversial topics in criminology today has been Judicial attitudes and their effects on the decisions that Judges make daily in

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\(^{27}\) *Ibid*, p.113

\(^{28}\) *Yaj*, 2, p.98

\(^{29}\) *Encyclopaedia of social sciences.* 7-8, p.464
courts. These attitudes, allegedly shared by many Judges were thought to be
gender based traditional attitudes, biases and myths about women. Although such
attitudes could be minimized with some judges they probably could not be
eliminated because overwhelming evidence suggested that they were embedded
in laws itself.\textsuperscript{30}

Law and Judiciary have always been comparatively lenient towards female
offenders as regards severe punishment like life imprisonment and death penalty.
In this world of gender equality these inhibitions should be shed of ruthlessly
and women who commits heinous offences with depravity specially ones which
are well planned and intricately executed should be punished severely. The
justification of Judiciary that their children become helpless without them is
baseless because with a deteriorating and irreversible mind set like theirs, what
good would their company do to their children if any is indeed a million dollar
question to be answered. Instead the children of such women offenders should be
placed under supervision of cells which monitor condition and help them
economically and socially. By this they are prevented from being transformed
into vagrants, tramps and beggars. NGO’s and welfare organisations should come
forward to help such children and help them integrate into the social mainstream
because it would be gross injustice that they should suffer for no fault of theirs.\textsuperscript{31}

The law gives no importance to the fact of the sex of the accused and it
does not matter whether a murder has been committed by a man or a woman. But
in practice death sentence against women are far less in number which does
prove that the courts do give a consideration, directly or indirectly, to this fact.

A case of Ediga Anama Vs. State of Andhra Pradesh\textsuperscript{32} perhaps truly
reflects a very crucial question of law ‘reversal of punishment’. The accused, a
married woman, was having illicit intimacy with a shepherded. She discovered
that he was having affair also with deceased, another married woman with a
child. She lured the deceased into a jungle on a false pretext along with her child

\textsuperscript{31} Supra Note 3 p.122
\textsuperscript{32} AIR 1974 SC 799
and then killed them both. To confuse the evidence the accused then clothed the deceased with her own clothes and burnt her face and buried the child in the river sand. The reason given by Justice Krishna Iyer, for reversing the punishment from death sentence to life imprisonment, was largely because of the accused woman’s family, her youth, her unbalanced sex and her expulsion from the conjugal home and most sensitive point was that she was a mother of young boy who needed her and the threat of a death sentence had been hanging over her for more than two years, were enough grounds, for sentencing her to imprisonment for life. The judgement very well explained that the courts do take into account the socio-economic background and the psychic of the female criminals and do consider her sex as a determination factor in deciding a case.

**Shamim Rahmani Vs. State**

In this case a young girl fell in love with a medical doctor, married and a father of three children. Numerous love letters were exchanged by the two. After some time the girl discovered that he was having affairs with other girls also. She called him to her home on the night of the incident and they had an altercation, and when he was leaving after some time she shot her dead. It was held that although it was a deliberate murder, the end of justice would meet if she was sentenced to imprisonment of life. Reason of leniency is her age and her feminity.

**Ice-cream Parlour case.** The Scandal has rocked the state in 1996 with prosecution alleging that one Sreedevi was running a brothel from an ice-cream parlour. It was alleged that the lady used to supply girls to various influential people, including politicians. The complainant K. Ajitha has submitted in her petition that though there were 51 prosecution witnesses in the case, all other except her had turned hostile as the accused were influential and used money and muscle power to coerce them. The trial court acquitted all the accused without appreciating the facts and the High Court also upheld the acquittal without bothering to examine as to why such a large number of witnesses turned hostile. The SC too however, dismissed the case when it comes on appeal.

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33 AIR 1975 SC 1883.
State of Tamil Nadu Vs. Nalini\textsuperscript{35} was the Rajiv Gandhi murder case. This case involved 26 persons accused of being involved in the conspiracy to assassinate former Prime Minister of India, Rajiv Gandhi in Sri Perumbudur near Madras (Cheenai) on 21\textsuperscript{st} May 1991. All the 26 accused had been sentenced to death by the trial judge, who was a designated TADA Court Judge. Of these 26, the Supreme Court finally confirmed the conviction against six accused only. The Supreme Court reduced the sentence of three accused persons and confirmed for the remaining accused persons. On the point of confirmation of death sentence of Nalini, Thomas, J. expressed a dissenting opinion on the ground that she was a woman and had given a birth to a daughter during trial and simply an instrument in the offence. The majority however did not agree to it. It needs to mention that the mercy petition of Nalini was allowed later on, on the same humanitarian grounds which were expressed by Thomas, J.

According to Thomas J, the following were the relevant considerations for converting the sentence from death to life imprisonment in the case of Nalini:

Another consideration which we find difficult to overlook is she is the mother of little female child who would not have even experienced maternal huddling as that little one was born in captivity. Of course, the maxim \textit{Justicia non novit patrem nee matrem} (justice knows no father nor mother) is a pristine doctrine. But it cannot be allowed to reign with its rigour in the sphere of sentence determination. As we have confirmed the death sentence passed on the father of that small child, an effort to save its mother from gallows may not militate against \textit{jus gladii} so that an innocent child can be saved from orphanhood.\textsuperscript{36}

Leniency is always shown in the case of pregnant women. Section 416 Code of Criminal Procedure states: ‘if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of sentence to be postponed, and May, if it thinks fit, commute the sentence to imprisonment of life.’ This provision is necessitated by the fact that if pregnant women are sentenced to death, it would result in the killing of the foetus also. After the child is

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\textsuperscript{35} 1999 Cri.LJ 3124 (SC)
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delivered, if the mother is executed, it will orphan the child and the child will be punished for no faults of her. In the case of assassination of the former Prime Minister Rajiv Gandhi, the judgement had given a dissenting opinion on the question of her sentence and held that she should be given the lesser sentence of imprisonment for life, in view of the fact that she had a child who was born in captivity. Another factor which weighed with the judge was the fact that Nalini’s husband Murugan, who is also an accused in this case has also been sentenced to death. If both Murugan and Nalini were to be executed, the child would be orphaned. In India its rare for women convicted of murder offences to be sentenced to death. Most of those women who have received death sentences have had them commuted. This Nalini case is recent example of this fact her death sentence is commuted in 2000.37

**Tamilmani Vs. State**38 the accused girl, unable to bear the beating given to her brother, stabbed the deceased by a knife at the spur of the moment. The injury was sufficient to cause death in ordinary course of nature. It was held that the accused had no intention to cause death, but she must be deemed to have knowledge that death might be caused, and since only single blow was inflicted on non-vital part of the body due to her womanhood her conviction under section 302 of IPC should be altered to one under section 304 part 2, and the sentence deserved to be reduced to the period of imprisonment already undergone.

Thus, it is clear from the judicial behaviour that except those cases where there was sharp public reaction in media and newspapers, normally the death sentences in case of women offenders was reduced to life imprisonment. In doing so, no objective standard was laid down for it. It gives an impression that in awarding and confirming punishment a lot depends up to the personal perception of the Judge. Consequently, a liberal Judge may convert the death sentence into life imprisonment, whereas, a strict Judge may not. It is true that if in one case death sentence is awarded to offenders why in other case it should be reduced? It is true that judicial conclusions cannot be drawn in a mechanical manner. But in the absences of any objective standard, the criminal justice system may be turned

37 Ibid, p.642
38 1997 Cri. LJ 144 (mad)
on the base of sex, luck and chance.\(^{39}\)

### 3.3 Recent Trends of Indian Judiciary

In India the recent trend of Judiciary as regards sentencing of women offenders is somewhat changing with the Judges getting stricter in their outlook toward the former.\(^{40}\) Lately women who have been associates of their male counterparts or spouses have been sentenced to severe punishments like life imprisonment and death. Mohammad Hanif Syed his wife Fehmida and aide Ashrat Ansari were sentenced to death by special court of Prevention of Terrorism Act for carrying out blasts at the Gateway of India and at Zaveri Bazar on August 25, 2005. Hanif and Fehmida are the first couple to get death under POTA.\(^{41}\)

In the case of *Renuka Bai and Rinkle alias Ratan and another Vs. State of Maharashtra*\(^{42}\), the appellant Renuka and Seema both sisters, their mother Anjali Bai a co-accused who died in 1997 and approver Kiran Shinde (husband of Renuka) all belonging to Pune. The two women from the city of Pune, were convicted of kidnapping and killing five children in the western State of Maharashtra. They used to kidnap small children below five years and dispose them off when no longer useful. In this manner they killed as many as nine children during the period from June 1990 to 1996. But only five of the murder could be proved. The women reportedly carried the children in their arm to avoid the suspicion while moving about in crowded town to snatch purses and other valuables. The children were allegedly murdered when they grew too old to be carried about or if they tended to cry in the public and aroused suspicion.

Renuka and Seema were sentenced to death by Session Court which was confirmed by High Court. Supreme Court in appeal against death sentence observed, “We are alive to the new trends in the sentencing system in criminology but we don’t think that appellants are likely to reform.” Their conviction and death sentence was confirmed by Apex Court. So Judges have to

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41 Ibid
42 AIR 2006 SC 2056
be sensitised about securing out speedy justice in cases relating to women criminals.

4. Women and Imprisonment

Imprisonment is one of the methods used to handle the convicts in such a way to protect and prevent them from committing further crimes for specific period of time and also to prevent others from committing crime on them out of vengeance. The concept of punishing the criminals by imprisonment has recently been changed to treatment and rehabilitation with a view to modify the criminal tendencies among them.\(^43\)

The pain of imprisonment experienced by women and girls committed to the penal institutions is due to yet another fact which holds that women suffer more hardship than men while they are in prison largely because of their greater need for family life and the deleterious consequences of enforced separations from their children.\(^44\)

It remains a universal fact that women make up a very small proportion of the total prison population but even after being a small proportion they are not well catered to. The NACRO document also held that women reacted to imprisonment differently turning self violent towards their physical and psychological psyche, also almost half of the women in prison have children who are dependent on them. Women also faced double discrimination on release because they are firstly considers ex-prisoners and secondly they face discrimination for violating accepted standards of feminine behaviour. Historically it was due to the campaigning efforts of Elizabeth Fry that women were segregated from men in prisons keeping in mind their differences-behavioural, biological and social. According to the Sandra Walkgate (2001) these differences in the contemporary era have helped in providing some concessions in comparison to their male counterparts and many prisons for women are organised in a ways similar to domestic situations.\(^45\)


\(^{45}\) Sandra Walkgate, Gender, Crime and Criminal Justice, (2001), p. 170
The processes of discipline in persons are not immune to gender. Jackie and Miranda (2004) say that prison is a male dominated environment run primarily for men by men with levels of procedural and physical security that are less relevant for woman’s containment. They further say that research into offending and what ‘works’ has drawn predominantly upon data for male offenders and most facilities and programmes have been designed with men in mind. Women bring with them into the prison system chaotic life experiences and mental health vulnerabilities, not to speak of a particular problem of substance abuse. These difficulties are further exacerbated by certain aspects of prison life such as loss of privacy, seclusion and sense of loss of control.46

Many disintegrate into psycho turmoil and psychosis due to shock of preconisation brought forth by repeated experiences of separation trauma and loss. Problem are never ending and of varied nature for women in prisons. It is now recommended that young girls should not be mixed with adult female inmates because the latter may bully and beat the former and the impact of criminogenic environment cannot be understood. Pregnant women may be vulnerable to physical and emotional attack from other inmates as their conditions may evoke strong feelings and unresolved issues in others. They may face loss of responsibility over the future of their unborn child. The offending women viewed as unfit mothers lose custody of their children either temporarily or permanently. The ill effects of imprisonment do not leave women even after their release from prisons. They may become homeless and subject to more damaged attachments to their families. For many women challenges of securing financial resources and housing along with resuming parental responsibilities can be very difficult. While in prison older women find themselves marginalized in a regime designed primarily for young men and once out of it they may find themselves alone, with no employment, loss of peer relationship, loss of spouse who may be dead. Middle aged women are at greater risk of physical ill health in prisons due to the ravages of menopause and osteoporosis along with the psychological distress being increased by sensory and cognitive impairment. This happens because the health care facilities are not designed to meet the needs of older

people.  

To say that imprisonment produces more painful reaction in women compared to men is not an exaggeration because the Subra Ghosh says that women bring with them identities and self-conception on filial roles as wives, mothers, daughters, fiancés or girlfriends. By being disposal of these roles may find herself frustrated, insecure and self degraded and the last straw on the camel back is the imposition of the new role which she is required to perform in the prison.

P.K. Tarapore in his article on female prisoners deplores that female prisoners do not get the consideration they deserve. In India in many jails women offenders are housed in sections of male jail, different categories are mixed together, there is no systematic job oriented training for them and neither a well-equipped female staff. Children often remain with their mothers because nobody comes forward to take charge of them when they crossed the age limit prescribed.

Female intimates remain idle and even the food they eat comes from the premises of male prisons cooked by male inmates, not to speak of the providing of vocational training on them, they are rarely given the opportunity to gain qualification that might enable them to gain worthwhile employment once out of the prisons. Female vulnerability to sexual exploitation is enhanced in the male dominated prison setup. Rehabilitation and social acceptance becomes difficult for the stigmatized ex female convicts. In a country like India many women prisoners are ignorant of their legal rights and are unable to obtain appropriate remedies. According to him they are in greater need of privacy, seclusion, medical and psychiatric care and to top up their maladies is the problem of their children’s placement while the mother is securing a jail term.

Indian Penal Code says that no women shall be summoned to the police station and only in rarest of rare case a woman should be remanded to police

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47 Ibid, p.61
50 Supra Note 3, p. 124
custody after the reasons are recorded by the Judicial magistrate, but truth is that women in India are taken into custody, summoned and detained in prisons on the most flimsy grounds. System is heavily balanced against the woman in custody whether under the police or in prison.\textsuperscript{51}

A National Expert Committees report of 1986 on women prisoners under the Chairmanship of Justice Krishna Iyer revealed dismissal situation that in prisons the wards are overcrowded, there were no basic amenities and medical care and women languished in jail because no one was ready to take them back.\textsuperscript{52} Prisons brutalize women manifold and any system brutalizes its constituents is a futile system, a system totally thrown away.

5. Human Rights and Women Prisoners in India

Human rights are those claims in life, which are available to every human being equally, irrespective of caste, creed, sex and nationality. The human rights of women are an integral part of universal human rights. The universal Declaration of human rights and the International Covenant on civil and political rights lay down standards of general applications at all times and in all circumstances setting the standards for advancement of human rights.\textsuperscript{53} These basic rights have been incorporated in the Indian Constitution. Part III and part IV dealing with fundamental rights and Directive Principles of State Policy, cover almost the entire field of the Universal Declaration of Human Rights. The Human Rights enshrined in part III of the constitution have been made non-derogable under Article 13\textsuperscript{54}. But it is matter of great regret that Indian women have not been benefited by these rights despite of the fact that these rights have been incorporated in Indian Constitution.

Plight of Indian women is quite miserable and its more shocking when we analyse their human rights while in prison.

Relegated in general to the status of second class citizens, women

\textsuperscript{51} Maya Majumdar, "Encyclopedia of gender equality through women empowerment" vol.1, p.129, (2005)
\textsuperscript{52} Ahmed Siddique, Criminology and penology, (2005), p.195
\textsuperscript{53} A.H, Robertson, Human Rights in the World, (1972), p.175
\textsuperscript{54} Article 13(2) reads as follows:
"The State shall not make any law which takes away or bridges the rights conferred by this part and any law made in contravention of this clause shall to the extent of the contravention be void"
invariably bear the shock of the harshness of society, when convicted or detained. A learned scholar in his empirical study has found that about 25% women prisoners in India are innocent and are implicated in false cases. They have been forced by male members of their family to own the crime. Furthermore once in the jail, most of them, rarely received a visitor from their relations. Their husbands usually develop relations with other females and went for second marriage. They are completely cut off from their families economically, socially, and emotionally. Misery of women prisoners do not stop here. Even after release, their human rights are jeopardized. Once she carried the stigma of imprisonment, she is looked down upon. She becomes unacceptable by her own family, her in-laws, community or society. So they have no place/home after release from jail. Thus, even after release they are unable to resume life, even if they want to. Long back in 1919, the Indian jail committee after investigation tried to address these problems and recommended certain reforms, especially setting up separate institutions for women prisoners, but till date, even after sixty two years of independence, substantial progress has not been made.55

A prisoners and detainee has all the fundamental rights and other legal rights available to the free persons, save those which are incapable of enjoyment by reason of incarcerations. Some of the basic human rights are available to all the persons whether convict or not. Women prisoners are entitled to these basic rights like men. The relevant International and National laws protecting and ensuring the human rights of prisoners can be discussed as such:

5.1 International Mandate

The journey of human rights in general starts with Universal Declaration of Human Rights in the year 1948. The Declaration grants equal rights to all human-beings irrespective of their caste, creed, sex and nationality.56

5.1.1 Covenant for the protection of Human Rights & Fundamental Rights, 1950

The concrete effort to protect human rights of prisoners and under trials

55 Dr. Viney Kappor, “HUMAN RIGHTS AND WOMEN PRISONERS IN INDIA” 2011 RLR (1)402
has been made through covenant in 1950. It provides for various basic human rights of the prisoners, viz.- Right to life (Article 2), Prohibition of torture (Article 3), Rights to liberty and security (Article 5), Rights to Fair Trial (Article 6), presumed innocent until proved guilty [Article 6(2)], To have adequate time and facilities for the preparation of her defence [Article 6(3)(b)], Rights to defend himself and Free Legal-Aid [Article 6(3)(c)]\(^57\).

5.1.2 International Covenant on Civil and Political Rights, 1966

Article 10(1) of the covenant provides that person deprived of liberty should be treated with humanity and with respect of inherent dignity of the human being. Article 10(2)(a) provides for segregation of accused from convicted and for their proper treatment as unconvicted persons. Article 10(2)(b) lays down those juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

5.1.3 Seventh Protocol, 1984

This instrument provides compensation for wrongful confinement to the victim\(^58\) and equality between spouses\(^59\). The signatory to this instrument are mainly European countries, but the general principles are followed by almost all countries.

5.1.4 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

This Convention prohibits any type of torture by police, security forces and jail authority upon accused or convicted. The word ‘torture’ encompasses all acts off ill-treatment, cruel, inhuman and degrading punishment that results in severe physical or mental pain or suffering\(^60\).

5.2 National Safeguards

Since India is signatory to most of International Conventions and the


\(^{58}\) *Seventh Protocol*, 1984, Article 3.

\(^{59}\) Id, Article 5.

\(^{60}\) *Convention against Torture*, 1984, Article 1.
treaties relating to protection of human rights of the individual including prisoners, the provisions have been made in the constitution to ensure the enjoyment of these rights. Article 20 of the Indian Constitution provides various rights to prisoners, which cannot be taken away such as; no one can be punished until proved guilty by the law, no one can be detained in prison for longer period than he or she is sentenced, no one can be forced to be witness against himself or herself, no one can be punished twice for the offence, no prisoner should be subjected to inhuman treatment. Besides, every prisoner has the right to communicate, right to read and write, write to cleanliness, right against torture, right to legal process, right to recreation, right to rehabilitation, right to parole, right to free legal aid. Along with these rights a women prisoner is entitled to keep her young child, who needs natural care and right to medical examination during pregnancy. Despite these legal safeguards, violation of the human rights of the prisoners is a common fact and thousand of complaints are received by National Human Rights Commission pertaining to handcuffing without just cause, inhuman treatment, detention in jails beyond period of imprisonment, inadequate supply of food, lack of proper sanitation and cleanliness facilities, lack of basic amenities to the prisoner, non-availability of proper bedding according to climate, lack of free legal aid, restriction to meet relatives, friends and advocate.

5.3 Judicial Intervention and Custodial Justice

Judicial directives and custodial justice which were earlier limited to the conditions of prisons and prisoners, have more recently, widened their scope to cover social welfare and mental health institutions as well as police custodial institutions. The court’s constitutional power of intervention has been invoked to ameliorate custodial abuses and malpractices, and to safeguard the rights and status of convicted and under-trials prisoners, women in police custody, women in protected custody and juveniles in welfare custody. A prisoner wears the armour of basic freedom even behind the bar that on breach thereof by lawless officials, the law will respond to his distress signals through ‘writ aid’. Justice

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61 Supra note, p.407
Krishna Iyer in *Sunil Batra’s* case\(^{62}\) has categorically observed:

> “In our Constitutional order it is axiomatic that the prison laws do not swallow on the fundamental rights of the legally unfree, and, as, sentinels on the qui vive, courts will grant freedom behind bars tampered of course, by environmental realism but intolerant of torture by executive echelons. The policy of the law and the paramountancy of the Constitution are beyond purchase by authoritarians glibly invoking ‘dangerous’ of inmates and peace in prisons.”\(^{63}\)

*Sheela Barse Vs. State of Maharashtra*\(^{64}\) Justice Krishna Iyer, j. declared that “*Human dignity is a clear value of our constitution not to be bartered away for mere apprehension entertained by jail officials*”. Similarly, torture and ill-treatment of women suspects in police lockups has been held to violative of Art. 21 of the Constitution. The Court gave detailed instructions to concern authorities for providing security and safety in police lockup and particularly to women suspects. Female suspects should be kept in separate Police lockups and not in the same in which male accused are detained and should be guarded by female constables. The Court directed the I.G. prisons and State Board of Legal Aid Advice Committee to provide legal assistance to the poor and indigent accused (male and female) whether they are under-trials or convicted prisoners.

Supreme Court has taken notice of Human Rights violation in criminal justice system in *Hussainna Khatoon*\(^{65}\). There were quite a few women prisoners who were in jail without being accused of any offence, merely because they happened to be victims of an offence or they were required for the purpose of giving evidence. They were in the language used by Bihar police, in protective custody. The court pointed out that the expression ‘protective custody’ is a euphemism calculated to disguise what is really and in truth nothing but imprisonment and the so called protective custody is nothing short of blatant violation of personal liberty guaranteed under Article 21.\(^{66}\) The court immediately gave the following directions:

\(^{62}\) AIR 1980 SC 1579
\(^{63}\) Ibid
\(^{64}\) (1983) 2 SCC 96.
\(^{65}\) AIR 1979 SC 1377
\(^{66}\) Ibid.
“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 related and taken forthwith to welfare homes or rescue homes and should be kept there and properly looked after.”

They also reprimanded the administration as well as the judiciary in the State of Bihar for the violation of rights of under trials who have been rotting for years without trial having commenced. Similarly in another case, Supreme Court gave direction regarding improvement of conditions in lockup for women prisoners and for providing adequate protection, particularly, to women confined in the police lockup. It is to be noted here that in this case the court treated the letter of complainant as writ petition. The cases of violation of Human Rights of women are not only reported in developing country like India, but also in developed States. In 1995, the U.S. department of justice wrote the Governor of Michigan:

“The sexual abuse of women prisoners by guards, including rape, the lack of adequate medical care, including mental health services, grossly deficient sanitation, crowding and other threats to the physical safety and well being of prisoners, violates their Constitutional rights-nearly every women interviewed reported sexually aggressive acts of guards.”

The National Expert Committee on Women prisoners in 1986 distressingly feels that even the benign directives of the Courts have not always succeeded in altering custodial reality. Process and procedures governing various forms of state custody and conditions prevailing therein continue mostly undisturbed and impervious to the various custodial reform groups.

6. Prison Administration in India

The word “prison” immediately evokes a stream of images viz. stark, forbidding walls spiked with watchtowers, inmates banging on the bars of their cells, and the suspicious eyes of armed and uniformed guards. It seems to be the

natural end for a convicted criminal, a permanent institution stretching from the pits of the medieval dungeons to the current era of motion detectors and surveillance cameras. But centuries of development and debate lie behind the prison as we now know it—a rich history that reveals how our ideas of crime and punishment have changed over time. Penalties other than incarceration were once much more common. The nineteenth century saw the rise of full-blown prison system in India, and along with it originated the idea of prison reforms. Hereunder researcher has discussed Indian prison administration, problems and issues regarding prisoners in India and prison reforms for women inmates.

6.1 Indian Prison Administration Post-Independence

After the advent of freedom a new phase of humanitarian prison administration began in India. Ideas regarding punishment and functions of prisons changed. The changing circumstances on the socio-economic scene of the country after independence had also inspired few conscientious prison administrators of our country to undertake some innovative experiments through their own individual efforts. Since such efforts and innovations were only sporadic and short lived, their total impact on prison administration was not discernible up to any appreciable extent.68

In the Constitution of Republic of India, prison administration has been included in the state list. In view of the changed penological ideology from custodial security to correction and rehabilitation of offenders, the Ministry of Home Affairs, Government of India, set-up a committee in 1957 to prepare an All India Skeleton jail Manual, to examine the prison Acts and other central legislation on the subject, and to recommend prison reform to be applied uniformly throughout the country. The committee was further directed to examine and make recommendations regarding the classification of prisoners on scientific lines, abolition of short-term sentences and provision of alternative measures to consider the question of care of children and of women offenders, etc.69

69 Ibid
The committee divided its recommendations as under:

1. **Provision of jail Manual**
   - Part I- Department of prison and correctional services.
   - Part II-Personnel.
   - Treatment of Prisoners.
   - Special categories.

2. **Classification of prisoners and diet-scale, short-term sentences, children of women offenders, smoking and use of hand cuffs and fetters.**

3. **Prison Reforms.**

4. **Legislation.**

5. **Other items, such as planning of correctional Administration, Five year plan, annual conference of correctional administration and revision of the Draft Manual and follow-up recommendation.**

The committee recommended that the prevention and control of crime, treatment of offenders and after care of prisoners should be treated as a unified programme. The Department of Prisons and Correctional Services should exercise jurisdiction over prisons juvenile delinquency, probation and after care services. The Inspector General should be a departmental officer, as far as possible. There should be a proper classification on the bases of sex, age criminal record, security conditions and need of training and treatment. There should be separate institutions for women, adolescents and recidivistic offenders, mental cases, and under-trials. Tuberculoses and leprosy inflicted prisoners should be provided with separate institutions. The maximum strength of prisoners should not exceed 750 in a central prison and 400 in a district jail.\(^{70}\)

### 6.2 Problems and Issues Regarding Prisoners in India

The prisons in most part of the India are overcrowded. Because of overcrowding, segregation does not take place between hard core criminals and

\(^{70}\) *Ibid*, p. 87
criminal of petty offences. They cause undue influence over petty offenders. Even in petty offences the offenders are not released on bail.\textsuperscript{71} Though Law Commission of India in its 78\textsuperscript{th} Report recommended that condition to release on bail should be liberalized.\textsuperscript{72}

The prison personnel do not have proper training in their field. So they misuse the power. Besides these, sometimes the jail officials are rough and tough exchange the petty gains. This causes resentment among prisoners. Sometimes even dangerous things are also supplied to the jail. It shows recklessness of jail personnel because it may be dangerous for other prisoners. Health problem of prisoners is also a major issue. They are suffering from various diseases. There are many diseases which are communicable like, T.B, AIDS etc. Persons suffering from these diseases are ignored and not identified and kept in separate cells. No proper medical treatment is given to jail inmates. However, it is duty of jail doctors to inquire the prisoners suffering from serious disease at the time of entering into the jail. Poor nutrition, poor ventilation lack of food, are also the cause of various disease.\textsuperscript{73}

Besides above, criminality in the jail is also the problem in respect of which attention is required to be paid. There are many cases of criminality in the prisons. Frequent quarrelling is a common phenomenon in the jail. Every prisoner wants to establish its superiority over his fellow prisoners. Other negates it which results formation of groups in the jail. Another cause of criminality is the continuous long absence from normal society and family, which deprives prisoners from their sex gratification which is one of the basic needs of human being. Not being able to control the sex desire they indulge in unnatural sexes, homosexuality, sodomy etc. these offences are very common in the jail. Though some of the advanced countries permitted periodical conjugal visit for inmates to pacify their sex urges.\textsuperscript{74}

Apart from the above problems the custodial tortures in prison is a
common practice. The children who do not know the meaning of offences are residing with their mothers inside the jail. This is also the violation of Human rights of children.\textsuperscript{75}

Another problem is regarding female prisoners. For women, imprisonment itself is very painful. To bring a female prisoner inside four walls of enclosure segregating her from outside the world and at the same time depriving her from the autonomy leads to psychological problems.\textsuperscript{76} Unequal treatment towards female prisoners is a major problem. Female prisoners in correctional institutions do not have same types of facilities as male prisoners such as vocational training, jobs in prison, industries and others. Neglected medical care is also a problem for the women. There is no proper medical treatment periodically. No qualified lady doctors are attached to the jail to meet out the problems of female prisoners. Expectant mothers in the custody are not being given proper nutrition. Malnutrition and non-regular visit of doctors cause serious health problems to those women in jail.\textsuperscript{77}

Here it is submitted that apart from the above, during imprisonment, female prisoners need strong psychological support but hardly are they being provided such facilities. Forced separation is a problem not only for the women who have to go to the prison but their children also. This is because they have responsibility of children and family both. Basically those children who are above six years old are the main victims of forced separation because they can not go with their mother. Besides above, fear of social stigma and problem of rehabilitation is a great problem for women prisoners. This social stigma is more attached to female than male. During incarceration they always feel that who will accept them not only during the imprisonment but even after releasing from the jail. Sometime because of this fear they commit suicide and end their life. Generally family members and relatives of such woman are not ready to accept her in the family. That is why after releasing from the jail they use to involve in immoral activities.

\textsuperscript{75} Dr. (Prof.) Deepti Srivastva, “Problem of Female Prisoners in India”, \textit{Indian Police Journal}, Vol.3 p.19, (July-September 2006)
\textsuperscript{76} \textit{Ibid}
6.3 Prison Reforms for Women Inmates

In India the Expert Committee on women prisoners 1986-87 observed that though the numbers of women prisoners in comparison to men is small, it cannot be held as a valid factor limiting the criterion of custodial facilities. Earlier to this the expert committee on women prisoners of 1980-83 besides recommending for separate institution for female prisoners also recommended that the staff of these institutions and annexes should compromise women employees only. The committee had few more recommendations to protect women prisoners in prison and in custody. Police investigation involving women must be carried out in the presence of her relative, a lawyer of a lady staff member. They should not be called to police station for investigation.

1. While in custody courtesy and dignity is their right expected from the police personnel towards them.

2. Bail should be granted to women under trials and the Probation of Offenders Act should be extensively used for the benefit of women offenders to avoid their imprisonment.

Sec 51(2) and sec 437 of Code of Criminal Procedure have incorporated many recommended reforms as laws and the jail manuals along with the Police Acts have also revised their laws so that they may help in the protection of women against possible sexual harassment by police personal. Reforms in the prison system for women criminals are need of time.

According to Ram Ahuja (1969) men in prison are provided with all sorts of labour and training but female inmates sit idle for most of times. The Public Account System and the State use system of labour which are used at present for the male offenders could also be used for female ones but before this, training should be provided to women in some modern pursuits like sewing or tailoring garments, knitting sweaters, training in plastic goods etc. according to Ahuja the basis for assigning the work should be the skill, the period of custody, intelligence, education and special aptitudes of female inmates. The present wage

\[78 \text{Ibid, p.196}\]
system should be enhanced for female prisoners because money is always an incentive to hard work.  

While the planning and monitoring of the schemes recommended by the seventh Finance Commission were being assigned to the National Institute of Social Defence through the ministry of Home Affairs, the Government of India appointed another committee (the All India Committee on jail Reforms) in July 1980 for making a comprehensive review of prison administration in the country and suggesting suitable measures for its improvement. Though total overhauling has not taken place, yet as a result of recommendations made by various committees, some of the better amenities have been extended to the prison inmates. The Committee was headed by Justice Anand Narain Mulla and it submitted its report in 1983. It gave suggestions on various aspects of jail administration including those relating to modernization of jails and segregation of young prisoners from the hardened criminals. Basic object of the committee was to review the laws, rules and regulations keeping in view the overall objective of protecting the society and rehabilitating the offenders.

The committee recommended that protection of society is universally accepted objective of punishment which can be achieved through reformation and rehabilitation of offenders. In order to keep out of circulation of harmful, habitual, dangerous recidivist, the committee emphasized correction and rehabilitation along with protection. The recommendations of Mulla Committee touched upon legislative, operational, security aspects beside matters like classification of prisoners, living condition in prison, medical and psychiatric services, treatment programmes, vocational training for prison inmates, problems related to under-trials and other non-convicted prisoners, and problems of women prisoners, etc. the report laid emphasis on the management of prisons to be entrusted to a cadre of professionals. The committee recommended a compulsory educational programme for all prisoners. The programme should comprise physical and health education, vocational and cultural education. The aim of education should be both literacy and correction. Under-trial prisoners

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79 Ram Ahuja, *Female Offenders in India*, (1969), p.115
should be housed in separate institutions located near the courts. Women, adolescent and habitual offenders should be segregated. Their detention should not be too long and when necessary additional courts should be set-up for quick disposal of cases. Women offenders should be provided a separate institution where the daily average exceeds 50. Habitual, prostitutes, and brothel keepers should be separated from other women. Certain categories of these offenders should be placed in state homes and *Mahila Ashrams*.  

Again in 1987, the Government of India appointed Justice Krishna Iyer committee to undertake a study on the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders. The following are some of the more important aspects of their recommendations:  

- Women prisoners, like men, should be informed of their rights under the law.  
- Women constables should conduct searches.  
- Medical checkups of women prisoners or under-trials should be done by women doctors as soon as they come to prison.  
- Women prisoners should be allowed to contact their families and communication with their lawyers, women social workers and voluntary organization.  
- Women prisoners should be allowed to keep their children with them.  
- Voluntary organizations of women should be encouraged to be associated with women prisoners.  
- Separate jails should be provided for women.  
- Special prosecution officers should be available to present the case of women prisoners.  

The Mulla Committee, Justice Krishna Iyer Committee and the National  

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81 *Ibid*  
Human Rights Commission have made numerous valuable recommendations to bring about not only improvement and reform in the jail administration but in the entire criminal justice system itself. In spite of so many efforts, conditions of prisons and prisoners have not improved.

6.4 Legal Provisions, Custodial Procedures and Safeguards

The spirit of Constitutional protection is reflected in the Code of Criminal Procedure, 1973. Some sections relating to legal provisions for women are dealt herewith:

1. Section 47, while dealing with search of a place entered by a person sought to be arrested, provides protection to women in proviso to sub-clause (2) of the section and read as: “Provided that if any such place is an apartment in the occupancy of a female (not being the person to be arrested) who, according to the custom, does not appear in public such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it.”

2. Regarding personal search of an arrested person, section 51(2) makes it explicitly clear that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

3. Section 53 deals with the examination of the accused by medical practitioner at the request of the police officer. Sub-section 2 of this section provides that “Whenever the place of a female is to be examined under this section, the examination shall be made only by or under the supervision of a female register medical practitioner.”

4. Section 98 empowers a District Magistrate, Sub-Divisional Magistrate or First Class Magistrate to compel restoration of abducted females.

5. Section 100, while making it incumbent upon the person incharge of a closed place to allow search, provides as follows in sub clause (3):
“Where any person in or about the place is reasonably suspected or concealing about his person any article for which search should be made, such person may be searched and if such person is a women, the search shall be made by another women with strict regard to decency.”

6. Section 416 enacts that if a women sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and may, if it things fit, commute the sentence to imprisonment for life. The Indian Penal Code similarly makes specific provision for women. The most important is the Criminal Law (Amendment Act), 1983 which makes provisions for the protection of certain rights of women prisoners. Under clause (a) of sub-section (2) of section 376 IPC it is stated that:

- Whoever being a police officer commits the rape in the premises of any station house whether or not situated in the police station to which he is appointed, or on a woman in his custody or in the custody of the police officer subordinate to him; or Being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of public servant subordinate to him; or

- Being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman’s or children’s institution takes advantage of his official position and commits rape of any inmate of such jail, remand home, place or institution; or

- Being on the management or on the staff of a hospital takes advantage of his official position and commits rape on a woman of that hospital shall be punished with rigorous imprisonment for a term which shall not be less than 10 years but which may be for life and shall also be liable for fine.

The National Expert Committee envisaged while sporadic legal reform, as illustrated by some new enactments is trying to reflect current social and
constitutional realties, it is evident that bulk of penal and custodial laws that continue today were enacted over a century ago and are substantially out of tune with today’s perceptions of human rights and correctional approaches and with the constitutional obligation for women. As the committee on the status of the women pointed out in its report, “The penal laws of country reflect more clearly the conditions of its society and its values than most other branches of law… Certain penal provisions in the law are definitely influenced by the established patriarchal system, the dominant position of the husband and socio economic backwardness of women.” Evidently, the dignity and the status of women, whether in custody or outside requires much greater attention, recognition and protection.83

6.5 Present Scenario in the Jails

The numbers of women jails are less in India, which make their lives miserable in jails because demands remain unattended. At present, there are 1280 prisons in the country; of these only six are exclusively for women with a total capacity of 975 and annual average prisoner’s populations are about 4000. In Punjab, for example, out of seven central jails, five district jails, two open air and ten sub-jails, there is only one women jail at Ludhiana. This is a clear-cut violation of human rights of women prisoners.84

However, the Eighth Finance Commission has recommended Rs. 1231 lacs for the creation of separate jails for women with a capacity of 2343. The rationale for establishment of separate institution for women is not new. The provisions of separate jails for men and women were in existence even during the ancient period. Kautilya has prescribed that a jail should be constructed in the capital providing separate accommodation for men and women was established in 1873 in India and then, in Massachusetts after four years. Hardly any progress has been made in this regard in India, despite recommendation made for time to time, including of V.R. Krishna Committee report in 1996.85

At present we see some of the larger jails in India do have the educational

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84 Supra note, 49, p.407
85 Ibid
component as part of the general training programme but only for males. Nowadays male inmates are sitting for examinations and pursuing higher studies. They are even getting placements in reputed companies likewise formal training and education for women is a must in the prison so that whether inside or outside the prison they are not exploited due to their illiteracy, gullibility and ignorance. Education would by all means bring awareness and sensibility in them about their rights and duties towards the society. Education is the mother of all industries and how can these women be industrious once outside the prison if not educated? 86

7. Brief Description of prisons of Punjab under study

7.1 Amritsar Central Jail

Amritsar central jail is one of the most important and sensitive prisons in the State of Punjab. It comprises of two separate prisons in the same complex-namely Central jail-I and Central jail-II. Central jail-II is also known as security jail. This prison came into existence in the present prison complex in the year 1957 as a District jail. Prior to this, there was a small jail located near the Red Cross building in the city of Amritsar. It was upgraded to Central jail in the year 1969. In 1976, this prison was elevated as Headquarter jail having administrative control over all the prisons of Majha and Doaba regions namely Central jails of Gurdaspur and Jalandhar, District jails of Kapurthala and Hoshiarpur and Sub-jails of Patti, Phagwara, Dasuya and Pathankot.

Amritsar prison complex accommodates around 2200 to 2500 prisoners against a sanction capacity of 1600. Around 62% of the prisoners are under-trials. A portion of this prison has also been notified as internee camp for the entire state of Punjab to accommodate the foreigners awaiting deportation. There is a separate hostel for the women inmates and their dependent children below 6 years of age.

At present there are 210 women prisoners are there. Out of these 200, 142 are under-trial ad 68 are convicted. Amritsar Central jail has now become a

86 Supra Note 3, p. 126
correctional institution and a Training and Research Centre. Respect of basic human values is the core of this reform process. The prisoners are trained here in a manner so that they share greater responsibilities to bring total reformation in the society.

Hostel No. 1 of the prison has been earmarked for the women prisoners. The Amritsar jail in association with various Governments and Non-Government Organizations launched a number of projects for empowerment of women prisoners. Under the scheme, the female inmates are being taught how to weave, make toys, stitch and make embroidery items. Female inmates take keen interest in the education and health advocacy programmes. There is a separate kitchen for the female inmates.

The major partners in women empowerment projects include:

- Punjab Social Welfare Board
- Guru Nanak Dev University, Amritsar
- Krishi Vigyan Kendra, Amritsar
- Indian Vision Foundation
- Red cross Society
- United Nations Office on Drugs and Crime (UNODC)

The children up to six years of age are allowed to reside in the jail along with their kith and kin. India Vision Foundation provides reading material and other support to these children. A crèche for the wards of the women prisoners has also been set-up by Punjab Social Welfare Board with the help of the India Vision Foundation.

UNODC has launched this project in Amritsar prison in collaboration with India Vision Foundation to prevent drug driven HIV. It is peer led intervention which aims to intensify efforts to reduce drug-related HIV/AIDS amongst vulnerable high-risk groups including prisoners. Similar programme has been stated for the male prisoners also.
7.2 Jalandhar Central Jail

The Jalandhar Central jail is situated in the heart of Jalandhar city with a bustling market and residential areas around it. It is almost a 100 years old building in a depilated condition. The Public Works Department had reportedly informed the jail authorities that they were continuing to use building at their own risk. Even in the office room of the jail Superintendent, temporary arrangement using cloth was made to ensure that the plaster from the ceiling does not fall on Superintendent’s working desk. It is clearly visible that the building is not maintained. Around the entrance area there are a few rooms that would pass-off as being the administrative section of the jail. These rooms are for the Deputy Superintendent, The Deputy Jailer and the warders on office duty. The registration of the prisoners and all those who come into and go out of the prison, the marking of the time of the arrival and departure of the staff and the searchers of the new prisoners or prisoners going and coming back from their hearings in the court, are all carried out in this space.

It is an overcrowded prison. Reports of hooliganism among prisoners because of in-fighting among inmates, is a routine feature. In order to enter women prison, one has to enter through main gate and pass through men’s prison. Women prison is within the Central jail for men. The prison has minimal facilities. It is an unkempt jail with both the under-trials and convicts in the same prison. There are two rooms (one big and another small) and open verandah with wash rooms on the left side. The women inmates have enough water for drinking, bathing and washing clothes. Rooms appear dull and very dingy with hardly any sunlight. There is just one light point in each room. There is a TV set and a carom board in the women cell. Women inmates spend time watching TV and playing carom. They are not engaged in any vocational training. There is no crèche, no school room for children, and no room for imparting education to the adults.

But now condition of women prisoners of Jalandhar jail has changed much as they are shifted to newly improved jail of Kapurthala. At present there were 170 women inmates are there. Out of which 119 are under-trials and 51 are
convicted. In this jail new kind of facilities are provided to women inmates. There jail rooms are much better as comparative to their Jalandhar jail.

7.3 Ludhiana Women Jail

Ludhiana Women Jail in the State of Punjab is comparatively a new jail built in the year 1989. The jail is located near Ludhiana Central jail which was once run as a part of the men’s jail. It is now administered and managed as a separate entity. The main entrance is a big prison gate with a small door within the larger gate through which visitors enter. Inside is an entrance area where the visitor log is kept. The entrance gate is a part of a large administrative block where the Superintendent, Jailor, Deputy Jailer and other staff have their offices. Most of the jail staff is women.

Women are often handled and treated differently from men by the correctional system, and it is incorrect to assume that the experience of imprisonment is identical for both women and men. Prisons for women are unlike institutions for men, and women adapt to the prison environment differently than men. Thus, because of these important reasons women’s prison was separately studied by the researchers. This part of the study will discuss some annotations made by the researcher during the visit to the only Women Jail of State of Punjab. It will also debate around the crucial issues of prison life and its degrading effect on social, psychological and other areas of life of women prisoners, making imprisonment an out-dated and costly mode of punishment under Indian Criminal Justice System. It is perhaps the psychological implications of imprisonment that may be most harmful to women inmates, for, in spite of the outward appearance of most women prisons, the effect can be confusing for female inmates and trends to ‘deaden any impetus for change.’ In her study of women’s corrections, Helen Gibson describe the psychological victimizations of women present in the typical women’s prison. Women in prison are further psychologically impaired by the outdated rules and regimens present in many institutions, limiting both their mobility and opportunity to better themselves for their return to the outside world. But what is more psychologically damaging to most female inmates than the prison imprisonment
itself is the reality that women are often the victims of a double standard in terms of the crimes they are convicted of, time served, and upon release (Flowers, 2008).  

Female prisoners cannot escape this form of psychological bondage once they come face to face with it. It was observed during the visit to the women jail that staying away from family led to psychological sickness among them. This kind of mental depression and sickness leads to deformity in their personality and with passage of time they become rude, angry, and insensitive towards their personal and social life. It was perceived that the children of inmates suffer the most by prison life. Living in prison, without any fault, with their mothers have a negative impact on growth and overall development of their personality.

Moreover, the researchers noticed that most of the children were mal-nourished; even though Punjab Jail Manual incorporates that special diet should be given to the children residing in jail. More attention should be paid for the educational growth of inmates and their children. Library should be developed and enriched through various newspapers, journals, books etc., for over all development. Hence, it can be assumed that purpose of imprisonment is not achieved as it not only fails to rehabilitate the inmates but also ignore the developmental avenues of their children. Adequate facilities for segregating the children and those with mental problems from other inmates were unavailable.

But very recently Recently in Ludhiana on 13th April 2013, Director Inspector General (prisoner) Lakhwinder Singh Jakhar inaugurates Day Care Centre to take care of jail inmates’ children. Two NGOs Vishwakarma NO 173 and Sarbat da Bhala, collectively adopted the crèche and nursery school, which was running in the Ludhiana jail from the years. This kind of efforts should be done by the authorities and NGOs to protect the children of jail inmates’ from the bad atmosphere.

It was observed during the research that the jail has only one pharmacist and no doctor was available. A male doctor from adjoining borstal jail takes a round twice in a week, once each in morning and evening. The lady doctor

R. Barri Flowers, Female Crime, Criminals and Cellmates, (2008), p. 76
(gynaecologist) recruited, visited women jail twice a week only. No psychologist is recruited, and there is no counselling cell, even though counselling support is very essential for the inmates as it was revealed through informal talk that most of them were psychologically sick and depressed. Recently in the month of September psychologist has been recruited by the Government but no doctor in this field has been recruited particularly for women jail. Moreover, the sensitive issues like drug-addiction, AIDS were not the concern of authorities. No attention is being paid for the drug-addicts to undergo treatment and the studies reveal that most of the prisons have even become a safe place for drug dealers.

The present study reveals that most of the inmates were illiterates. There are no regular education facilities in jail except that classes are taken by the educated prisoners. Facility of elementary education was missing in the jail. The inmates were rude and illiteracy among them develops bad habits and erodes sense of responsibility and moral duty towards their life. It was observed during the visit that basic etiquettes among them were missing. Moreover, the environment within the four walls of prisons makes the prisoners loose all their morality, tenderness and politeness making their behaviour anti-social. The Committee on Empowerment of Women took up the issue of women in detention and held emphasis on the need for adoption of a specialized approach for rehabilitation through education. Computer education should be given to the women prisoners as this will not only boast up their personality and educational status but will also give them various job opportunities after their prison life. It has become practically impossible to build up more prisons in order to reduce the congestion. As such, treatment and rehabilitation of prisoners become impossible. In addition, such congestion itself works as a source of tension among the prisoners and the personnel.

Convicts and under-trials can be identified from one another on the basis of their dress code and work schedule. There is no separate wing for the under-trials. For all practical purposes, the convicts and under-trials are treated in the same way and they mix freely with each other. Educated convicts work in office. The fact that under-trials may not be compelled to do anything, not work, attend classes or attend get-togethers, makes for a different set of expectations at such
places. Sometimes few under-trials do express an interest in being kept occupied.

Overcrowding in prisons is a common phenomenon which was witnessed even in this women detention centre; therefore, there is an immediate need for the making of new and modern jails with much more capacity, which obviously needs more financial aid from the governments. However, the present jails too needs to be renovated and upgraded with various facilities like a hospital, administrative block, training centre-cum-canteen, library block, central watch tower, workshops, educational facilities, fire fighting system, solar water heater system, rainwater harvesting, a green central court with every ward, video-conferencing facility, sewage treatment plant, and dual water supply system. Moreover, methods used for imprisonment and segregation, harsh attitudes towards prisoners, and discriminations equally augment the dangerous status of inmates. Hence, the prisons can no more be considered as correctional homes; moreover, they have merely become stores of human beings.

The under-trials and convicted were though lodged in different cells but the common jail campus did not result in complete segregation. A need to sensitize Criminal Justice System for female offenders can be one of the options to handle the problem of under trials.

Firstly, there is an urgent need for simplification of bail procedures for women under-trials, especially were separation from their families and anxiety about the well being of their children are major concerns for women in detention. Secondly, more family courts should be established for the smooth and flexible administration of justice and for speedy disposal of the cases. Thirdly, there is also an immediate need to recruit more female judges to deal with the cases of female offenders, which might ensure better understanding of the situation which led these women to crime. Fourthly, the whole judicial system needs to be sensitized towards women’s issues. This can be achieved if all including judges, magistrates, and advocates orient themselves for a more sensitive handling of judicial and legal procedures affecting women. Fifthly, the Punjab Jail Manual should be amended and it should be made mandatory for absolute segregation of under trials and convicted. The under-trials which remain in prison for many
years put additional burden on the authorities which is another drawback of imprisonment as a source of punishment.

In many cases, it was observed during the visit to the women jail, that most of convicts belong to the poverty-stricken class of the society and it causes the same factors that worked as pretext for criminality to come up once again after the offender is released. So, it can be concluded that in most of the cases imprisonment does not help in preventing recidivism, as their weak financial condition and social problems drag them again to the world of crime.

The present study covers various areas related to female criminality and delinquency and impact of prison life on females. The analysis of the data helps in hypothesizing the role of low socio-economic status to be a crucial factor within women to commit crime. Various theories and studies reveal that inferior status of women in family and society makes her stressful which is ultimately a lead towards commission of crime. There is hence, a need for psychological and sociological approach by giving opportunities to them so that they can think of rehabilitating themselves once they are out of prison.

The vocational training given to them in the form of embroidery, stitching, candle making etc., are neither sufficient for their economic independence nor the inmates show much interest in these activities. Moreover, there are virtually no special programs or incentives available for female inmates who are mentally challenged, handicapped, educationally disadvantaged, or simply uninterested in vocational training. The weak and outdated vocational courses make the female inmates lethargic and they gradually loose the sense of responsibility towards their social obligations. Hence, they are then unable to adjust in social routines ones they are back in society.

The jail premise visited by the researcher was inefficient and inadequate according to the number of inmates. The convicts under the present system of imprisonment is facing difficulties in compensating damages inflicted to the victim, as they are disallowed to take part in any social and economic activities. This also entails an overall negative impact of imprisonment on the economic development of prisoners. Moreover, the present system of prison does not help
in reducing recidivism so the endeavour of punishment is not being achieved. Money does not guarantee decent prison conditions and operations, but lack of money assures the opposite. At present, our jails are experiencing very serious budget crises that may persist for years. General conditions relating to food, lodging, clothing, recreation etc., were far below standard and needed considerable improvement. Toilets were blocked, unhygienic and less in number as compared to the inmates, including children, using them.

A need was also felt by the researchers to strengthen the free legal aid cell for the prisoners. The students of Law Schools can be involved to render legal assistance to the women prisoners. Moreover, all women in custody must be informed of their rights including their right to demand free legal aid. The lack of such basic facilities including experts, like psychologists, drug de-addiction experts to deal with criminals, reveals the fact that there is scarcity in the department. The vacancies of administrative and other supportive staff were witnessed by the researcher.

Most of the documentary work was done by the staff with the help of a few educated prisoners. Computers should be introduced in compilation of data and other details of prisoners as it’ll not only reduce the documentary work of the official staff but will also make jail networking better. It was felt during an interaction with the custodial staff that they can be an important element in the reformation of prisoners. To achieve this aim there is a need for their motivation and better promotional avenues.

The researcher was informed by the jail authorities that they at times feel helpless to handle inmates in emergency situations because of lack of proper and effective power and weapons. Moreover, the authorities sounded critical about the concept of ‘human rights’ because many a times prisoners take undue advantage. Hence, the rights of the prisoners and its limits need to be defined in prison laws because it should not be misused by the criminals as this result in adverse upshot of the deterrent effect of punishment, and better working conditions should be made available for the prison staff. The laws and manuals dealing with prison administration should be thoroughly reviewed and amended
regularly taking into consideration the changing nature and dimensions of crime in society.

The present Act, Prison Act, 1894, which was prepared more than 114 years ago during the British Rule in accordance with the conditions prevailing at that time, should be replaced by new law keeping in view the present circumstances. The Punjab Prison and Correctional Service Bill, a demand which has been pending before the government since long should be speedily operational zed. The new law will not only target prison life of the inmates but will have some objectives to be fulfilled even after its completion. The provisions of the bill will have special focus on women prisoners as well. The real rehabilitation of women prisoners is possible if law makes it mandatory for government to take essential and compulsory steps for them after their release such as special employment schemes, financial assistance; low cost housing facilities etc., as it’ll not only bring economic security but will also prevent women prisoners from social deprivation after their release.

There were 242 women in the jail (convicts and under-trials) and 22 children at the time of recording of the responses. The women jail is overcrowded. Each day large number of convicts from different sub-jails is sent to this jail. Many inmates do not like the ideas of all women’s jail. They prefer to stay within the sub-jails so they do not face the difficulty of meeting their family members. On the other hand, there were some inmates whose relatives or family members were in Ludhiana Central jail and they could meet them once in a week within the premises.

7.4 Patiala Jail

Patiala jail was built in 1905. It is spread in an area of 94 acres. Patiala central jail has provision for women prisoners. It is located at a distance from the main city. The Superintendent is incharge of the entire jail complex. There is one women Assistant Superintendent and six women warders to look after the women prisoners.

The enormous door (Colonial Structure) has the usual inset smaller gate through which most people enter. Around the entrance area there are some rooms
for jail officials. A semi-open room near the entrance is for the visitors. The inmates meet their visitors through barred windows. The visitors bring food items, holy books but not anything made of glass, intoxicants and other goods that are prohibited. The goods brought by visitors are thoroughly examined by staff on duty.

The prison houses both men and women. However, women enclosure is apart from men’s prison. There is a Gurudwara and a temple in the prison. There is a library, and a small dispensary managed by a permanent qualified doctor. Women inmates have no access to the library. There is no crèche, no school for children, and no room for imparting education to women prisoners, whereas for men different educational courses are being run by Indira Gandhi National Open University. Kitchen is managed by male prisoners who are supervised by convict officers. For lack of funding there are work areas only for men and not for women. Women are kept in a separate enclosure with separate entrance within the main prison. There is one big one room and a small room for solitary confinement. The big room has stone floor where the women inmates sleep and there is no provision for storage. Storage of personal belongings is done in bags (plastic or cloth). There are windows all with bars and grills. In a situation of large number of inmates in the prison at a time, many have to share the outside verandah. The prisoners stay in the room having a combined foul stench of state and damp cloths and body odours. The room has a night toilet meant only for urinating. The other toilet is located at the back of the cell. The toilets are usually clean as this task is done by women themselves and there is no shortage of water.

The women jail has an open area where most of the women made their earthen chulhas. Women prepare their own food and used dried rotis as fuel.

8 Alternative to Imprisonment for Women Offenders

We already know that the effects of imprisonment on women are destroying their mental and physical health. Punishment in the form of imprisonment for women has unimaginable consequences outweighing most of the time the offence committed women are different from men biologically,
psychologically and socially and keeping in mind this differences the penology for women should no doubt be a women wise penology, just as Carlen Pat in 1990 had argued for. According to her there should be cogent and coherent policy agenda for alternatives to prisons for women. Her proposal includes the use of community service order for all female probation groups.\(^{88}\)

The social investigation of each case of women offenders helps in finding out the causal factors and also provides the courts the necessary information so that they may select the most appropriate treatment for female offenders. This according to Ram Ahuja is not an impossible task, keeping in view the small number of women offenders in the society and also considering the consequences of women imprisonment on her children and her family.\(^{89}\)

Many women languish behind bars due to lack of legal aid, some are innocent and large number eligible to be released on probation are prisonised. There are cases too when women committing minor offences are given long imprisonments. The sentencing authorities can not overlook the fact the majority of crimes committed by women are due to their maladjustment in families, in social and economic field and the rejection faced by them in family and society. According to Ram Ahuja almost all women criminals are first offenders driven by either emotionalism, frustration and role conflicts so sentence wholly unrelated to the feeling, attitudes and compelling situation and circumstances of the women offenders would fail in its deterrent as well as reformatory aims. To quote Ram, “A more flexible sentencing policy which makes most intelligent use of available methods and resources is the need of the day”.\(^{90}\)

Suggestions worth implementing in this context are the introduction of indeterminate sentence system for women offenders like probation, parole, open jail and community service system. Classifying women offenders for the purpose of individualized treatment firstly aids in focusing specifically upon individual treatment needs because for example a similar offence may be committed by two

\(^{88}\) Carlen Pat, "Women’s Imprisonment at the millennium” *Criminal Justice Matters*, (1991), vol 38, No. 1, p.3
\(^{89}\) Supra Note 23, p.92
\(^{90}\) Supra Note 23, p.110
women for different reasons so the personal characteristic of the offenders and their treatment needs should be the basis of the classification of women offenders.\textsuperscript{91}

In the indeterminate sentence for female offenders the maximum and minimum sentences should be fixed by the courts but the exact period of detention should be determined by a committee of various persons including the probation officer and the prison official on the basis of the offender’s record and behaviour during the period of sentence. The basis for determining the exact period of detention should be the state of mind of the offender, her attitude towards her own difficulties, the problem and the suitable environment in the family and the community. Because prisonisation is in itself an agonizing processes the lesser the period of punishment the better and especially for those who have stumbled into criminal activity due to forces beyond their control.\textsuperscript{92}

As regards probation we know that it can be used to save some selected type of persons from the rigors of punishment even if found guilty by a court of law. By placing the female offenders on probation the court saves them from the stigma of long term jail life and also from contaminating influence of hardened prison inmates. The emphasis in probation should be on ‘supervision’. In India female probationers are kept mostly under the supervision of male probation officer. We need female probation officers to be recruited in large numbers for this purpose because women understand their kind better and also because the careful task of supervision can be done none hesitatingly and at all times. Long prison sentences only develop magnified bitterness and hopefulness against the forces of control which can be checked by giving parole to suitable women. Leave and parole system should be encouraged in jails for women so that women offender’s social and family contacts are not snapped off and also to check the sexual perverseness of the women concerned and their spouses. The leave system and release on parole have immense socio-psychological advantage but the reality is that they are provided for long term male prisoners only. It is high time

\textsuperscript{91} Ibid p.113
\textsuperscript{92} Uma Tripathi, “Punishment for Female Offenders with Special Reference to Effect of Imprisonment and its Alternative \textit{Cri. LJ}, vol 118, part 1348. P.127 (2012)
that the same may be in practice for women offenders too and that too liberally. The probation officer should be whether the parolees are leading an industrious, active and disciplined life outside the prison. On the recommendation of the probation officer the State should provide vocational and technical training to them apart from financial assistance too\(^93\).

There should be open jail for female offenders who do not require close supervision and restriction on freedom in the prisons. Open jails should be a reward to the female inmates who have an excellent record of good behaviour in prison. Alternatives to custody for women who commit less serious crimes can also include community based programmes linked to probation and the supervised group housing. For those to be kept in prison anyhow the times should be minimum with additional period of supervision in the community.\(^94\)

Alternative sentencing methods are worth trying on women prisoners and the one which is most suited for experimentation is the community service order—a form of sentence for selected prisoners. It is both punitive and rehabilitative in nature because under it an offender is required to perform unpaid work of benefit to the community under the supervision of a probation officer who shall provide rehabilitative counselling and guidance to the offender. According to Mrs L Jayashree (Associate Professor P.G Department of Legal Studies and Research Acharya Nagarjuna University) prisons damage the people mentally and physically and specially the most vulnerable ones like women and women with children. Besides, it is also suggested that the Government should open rescue homes, Asylums and shelter homes with boarding, lodging and training facilities. Special care be taken about juveniles delinquents, females and unmarried female prisoners and detainees. It is also suggested that separate women jail with female staff be established.\(^95\)

The female prisoners while in prison faces mental trauma constantly thinking of her children’s fate. Even once she is released, in an orthodox country like India many additional hurdles crop up leave alone the previous ones due to

\(^{93}\) *Ibid*

\(^{94}\) *Ibid*

\(^{95}\) *Cri. LJ*, vol. 4, p.116, (2005)
the stigma attached to her. She may not get married if spinster, a married woman may find out that in her absence her spouse has remarried or even abandoned her. Her children may be abandoned, ill-treated and even lost. Destitution and absence of control may force them to land into the sinister world of criminality. Alternative sentencing methods should be tried on female offenders who serve normally a short term sentence and who do not pose a risk to the society.\textsuperscript{96}

9. Conclusion

The Legislators, Judiciary and the Lawyers need to be more sensitive to the issues relating to the women. According to Sandra Carlen’s women wise penology has twin aims- first to insure that punishment of female law breakers does not add to their oppression of women in the future.\textsuperscript{97}

Women offending cannot be separated from the context of the roles that women play in society and in the family. In a male dominating society though it is wrong to view women offenders as victims it is equally irrational not to recognize and work with the prevalence in women’s histories, of exploitation, significant loss and poverty. Likewise we cannot ignore the enormous social cost of women imprisonment in terms of the disruption of family and social bonds hence alternate sentencing methods are most suited for the majority of women prisoners. The old fashioned punishment system needs reform and instead of teaching women ‘good’ and ‘bad’ female roles only, should explore new pastures with reintegration and rehabilitation as its primary aim for the most vulnerable though most essential constituent of society.

The number of women offenders is, generally, meagre and the problem of security is also not acute in their case. As a result, no meaningful efforts were so far made to improve their conditions in custody or after their release. To establish a separate institution for such a number of women prisoners has often been ignored by legislature. There is strong need to look for alternative to the traditional criminal justice system and incarceration. It is argued that ‘incarceration fails to address, or even exacerbate the problems women were

\textsuperscript{96} \textit{Ibid}
\textsuperscript{97} Sandra Walkgate, \textit{Gender, Crime and Criminal Justice}, (2001), p.172
facing prior to incarceration.’ Reformation and rehabilitation should be the sentencing policy for women offenders as opposed to punitive treatment. The main purpose of punishment is to protect society from crime and to reform the criminal, so that he can lead normal life after release. The women face more problems in rehabilitation after being released from the prisons since they completely cut off from their families. Neither the family member accepts them nor do they take advantage of rehabilitation scheme due to illiteracy and ignorance. It is submitted that the process of rehabilitation should start as soon as female offenders enters the prison and should continue till the ex-prisoner is fully absorbed into society. It is suggested that welfare officer should make the women prisoners aware of the Government Rehabilitation Assistance Scheme and helps the deserving ones to secure it.

98 Supra note 51, p.104