CHAPTER 2

RIGHTS OF WOMEN PRISONERS: A LEGAL PERSPECTIVE

In the days when the entire purpose of the imprisonment was punishment, the rights of the offender seemed unimportant. This was so because he/she seldom returns to the community, neither he/she nor his/her family would like to complain that his/her right has been infringed because it was believed that a prisoner had no fundamental rights. As the philosophy of penology moved towards rehabilitation and reintegration, however, the complete deprivation of rights became intolerable. The significance of human rights available to the prisoners beyond the deprivation of liberty has been clearly spelled out in the national, international and regional human rights instruments. Today the real difficulty is not so much concerned with what right prisoners have but what obligations rest on the authorities to ensure those rights because prisoners are often placed in a position where they are helpless to protect themselves from assaults, attacks or other crimes often far worse than those crimes for which they were convicted. Prisoners wholly depend on prison authorities for almost all of their day-day-day needs. As the assurance of a human right to a free individual often only demands that the state does not breach the right, in case of prisoners this usually require that the authorities should actively shape the pre-conditions which the prisoners can actually enjoy the right. Thus, beside negative obligations such as obligation not to torture detainees, prison authorities have positive obligations to provide such living conditions so that prisoners can have their other rights. Endorsing above philosophy The Human Rights Committee has issued a General Comment on Humane treatment of persons deprived of liberty in which it spells out the obligation to ensure humane treatment of prisoners and respect for their inherent dignity, clarifying that States have:

a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty. Treating all persons deprived of their liberty

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with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. Therefore, accordingly in this chapter now a closer look will be taken at a variety of specific human rights protections available to women prisoners and correlating positive obligation of the state concerning women prisoners under National, International, and Regional perspectives.

2.1 RIGHTS OF PRISONERS

Prisoners can have two types of rights:

- **Substantive Rights**: Substantive rights are those rights created and defined by statute like Indian Penal Code, Prison Act, which are available to prisoners under statues enacted by the government.

- **Procedural Rights**: Procedural rights are those rights generally classified under the concept of due to “Due Process Clause”\(^3\) When a person is entitled to due process of law it means that there are certain rules and the procedure that the state must follow.

Essentially, the substantive law defines the rules by which all members of society must play. While procedural law defines the rules by which the Government must play while dealing with a citizen’s liberty.\(^4\)

Although Indian constitution has no “Due Process Clause” or the “VIII Amendment”, but after Cooper\(^5\) and Maneka Gandhi\(^6\) case, consequence is the same and added that article 21 is the counterpart of the procedural due process in the United States. For what is punitively outrageous, scandalizing, unusual or cruel and rehabilitative counter productive, is unarguably unreasonable and arbitrary and is short down by art 19 and if inflicted with procedural unfairness, falls foul of article 21. Part III of the Constitution does not part company with the prisoner at the gates and judicial

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4 Ibid.


oversight protects the prisoner’s shrunken fundamental rights. If flouted, flowed upon or frozen by the prison authorities.\textsuperscript{7}

\subsection*{2.2 NATIONAL PERSPECTIVE WITH REFERENCE TO WOMEN PRISONERS}

Under the National perspective researcher has discussed those rights which are expressly recognized under the Indian laws governing prisons with the corresponding duties of the prison staff and other officers of the criminal justice system.\textsuperscript{8}

\subsubsection*{2.2.1 The Prisons Act, 1894}

The Prison Act 1894 is a central act providing for regulation of prisons almost throughout India. This act defines the duties or prison officers including medical officers, admission, removal and discharge of prisoners, food, clothing and bedding and different categories of prisoners as well as issues relating to their health and employment while in prison.\textsuperscript{9} The following sections of the act specifically deal with women prisoners to protect them against the abuse or torture.

\begin{itemize}
  \item \textbf{Search and Examination by Female Staff}

  Women prisoners are more vulnerable to abuse. Therefore, in order to protect their dignity and privacy, act requires that search and examination of women prisoners should be carried out by matron under the general or special orders of the medical officer on their entry into prison.\textsuperscript{10}

  \item \textbf{Separate Accommodation for Women Prisoners}

  Women prisoners should be kept in separate buildings so that no business could takes place between men and women prisoners.\textsuperscript{11}
\end{itemize}


\textsuperscript{10} S. 24 of \textit{The Prison Act 1894}.

\textsuperscript{11} \textit{Id}, S. 27.
• **Protection against Imposition of Instrument of Physical Restraint**

  Act strictly prohibited the imposition of handcuffs, fetters and whipping on women prisoners for any prison offence.\(^\text{12}\)


  Punjab Jail Manual 1996\(^\text{13}\), included forty two chapters, eleven hundred and sixty rules, twenty supplementary appendices and a comprehensive index. All the rules framed in the manual are under the authority of section 59 of the prison act, 1894. This manual is made equally applicable to both male and female offenders and prisoners.\(^\text{14}\) The manual contains the following protective provisions to be followed by prison staff in the treatment of the women prisoners.

• **Right against the Use of Instrument of Restraint**

  In order to protect from torture, manual strictly prohibits the imposition of handcuffs on women prisoners.\(^\text{15}\)

• **Right to Search by Female Warder on Admission**

  In order to protect the dignity of women prisoners the search and examination of women prisoners should be carried out by the female warden under the general or special orders of the medical officers.\(^\text{16}\)

• **Classification of Female Prisoners**

  For the purpose of treatment, female prisoners should be classified into different categories on the basis of sex, age, condition of health, criminal record, the legal reason for their detention and kept in separate institutions or annexure and units for the purpose of their treatment.\(^\text{17}\)

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\(^\text{12}\) *Id*, S. 46.

\(^\text{13}\) A jail manual is a ‘Digest of Rules and Regulations Governing Prisons and Prisoners’.

\(^\text{14}\) Paramjeet Singh, “Jail and other Institution for Female Offenders and Desirability and Extent of Protection to them Against the Keepers of these Institutions: Exploitation of Female Offenders”, Amritsar Law Journal, 1989, p. 130.

\(^\text{15}\) Para 356 of the *Punjab Jail Manual 1996*.

\(^\text{16}\) *Id*, para. 496, 400 (6).

\(^\text{17}\) *Id*, para. 495, 496.
• Separate Accommodation for Women Prisoners

Women prisoners are vulnerable to physical abuse. Therefore manual requires that women prisoners should be kept in separate institutions or annexure, so that no business can takes place between male prisoners and them.\textsuperscript{18}

• Protection against Exploitation

The task and time of labour imposed on female prisoners should not be in excess of two-third of maximum task and time for hard labour and medium labour respectively prescribed in respect of adult male convict: provided that the time occupied in education/vocational training activities should found as week period.\textsuperscript{19}

• Facility of Conveyance for Female Prisoners

While traveling by road during transfer from one jail to other, female prisoners should provide separate conveyance and their transfer should takes place only during the day.\textsuperscript{20}

• Commutation and Postponement of Death Sentence

In case the female prisoner sentenced to death found pregnant, high court must either postpone the execution of death sentence or committee the sentence to imprisonment for life.\textsuperscript{21}

• Provision for Extra Diet for Female Prisoners

Nursing mothers admitted to jail with her child should provide extra diet in addition to the ordinary diet given to female prisoners.\textsuperscript{22}

• Safeguards for Female Prisoners Sentenced to Death

Female prisoners sentenced to death:

(i) Should be guarded by the female warden without baton.

\textsuperscript{18} Id, para. 498.
\textsuperscript{19} Id, para 614.
\textsuperscript{20} Id, Para 681.
\textsuperscript{21} Id, Para 776.
\textsuperscript{22} Id, Para 820.
(ii) Their search should be conducted by the matron or a female warden without the presence of male officials.

(iii) Handcuffs should not be imposed on them when allowed into the cell-yard.\(^{23}\)

- **Right to Medical Care and Treatment**

  (i) In respect of sick female prisoners, it is the duty of the female warden to call the attention of the medical officer to every female prisoner who complains of being or appears to be ill.

  (ii) To satisfy heresy that sick female prisoner is getting special diet as prescribed for her by the medical officer.\(^{24}\)

2.2.3 **Punjab Prisoner (Attendance in Courts) Rules, 1966**

These rules were framed by the government in exercise of the powers conferred by section 9 of the prisoners (Attendance in courts) act, 1955 which provides rules and procedure for the attendance in courts of persons confined in prisons for obtaining their evidence or for answering a criminal charge. It provides following protections to Women Prisoners.

- **Prohibition of Imposition of Instruments of Restraints**

  (i) These rules prohibit the imposition of handcuffs on female prisoners when traveling by rail or road unless it is essential to prevent the escape, violence or suicide.\(^{25}\)

  (ii) If in any case handcuffs are imposed, on female prisoners the senior police officer should record the reasons in writing at headquarter.\(^{26}\)

- **Separate Guard for Female Prisoners**

  It further provides that when female prisoners are produced in courts they should sent along with separate guards instead of ordinary hawalat guards in order to protect them from harassment.\(^{27}\)

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\(^{23}\) *Id.*, Para 770.

\(^{24}\) *Id.*, Para 221.

\(^{25}\) *Rule* 10(a) (4) of Punjab Prisoners (Attendance in Courts) Rules, 1966.

\(^{26}\) *Rule* 10(b) (3).

\(^{27}\) *Rule* 17.
2.2.4 The Punjab Good Conduct Prisoners’ (Temporary Release) Rules, 1963

The Punjab Good Conduct Prisoners’ (Temporary Release), Rules, 1963 were framed in the exercise of power under section 10 of the Punjab good conduct prisoners (temporary release) act, 1963, which empowers the state government to frame rules by notification for carrying out the purposes of the act. Thus, these rules provide procedure for the temporary release of prisoners for good conduct.

- Release of Women Prisoners

This rule provides that when a female prisoner temporary released under the Punjab Good Conduct Prisoners’ (Temporary Release) Act, she should be transferred to the jail nearest to place which she want to visit during her temporary release. It is the duty of the superintendent of the jail from which she is transferred to inform her family members as she specify about the.

(i) Date of her release

(ii) Jail from which she is to be released.\(^{28}\)

2.2.5 Punjab Police Rules, 2011

The truth that human personality is inviolable and that all human beings what ever their rank or status in society have a right to live with dignity is the fundamental Principle underlying all laws concerned with human rights in any free democratic society. India shares this belief with all the nations who are parties to the Universal Declaration of Human Rights. The founding fathers of the India attached the great importance to human rights and accorded them a high place in the Constitution. But in a lawless society, where violence prevails, the human rights of individuals and of groups are likely to be trampled on or, at the very least, ignored. State can protect and promote the human rights of its citizens only if there is maintenance of law and order in society. Thus, maintenance of law and order, to protect the human rights of every person is of prime importance to any Government.\(^{29}\)

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\(^{28}\) *Rule 8.*

The primary institution on which state lies for maintenance of law and order is police.\textsuperscript{30} Police, are duty bound to create and maintain an environment of peace and order within which legitimate individual and groups ends may be pursued. In carrying out these duties effectively, the police have been given responsibilities and powers, while exercising these powers, police are required to examine their own methods and behaviors in order to respect the Constitutional commitment to the individual’s fundamental rights and to ensure that the protectors of human rights do not become its major violators.\textsuperscript{31}

Thus, in order to achieve these ends and to make police more accountable towards society and to bring the transparency in the work of the police, on the recommendations of the Supreme Court, the State of Punjab has enacted a new Punjab Police Act, 2007 and framed the Punjab Police Rules, 2011 under the act, in order to replace the around 79 year old Punjab Police Rules, 1934.

Under Chapter 20, entitled “Human Rights” of the Rules, Police are expected, whenever they encounter women, to follow the following rules.\textsuperscript{32}

- Women should be shown special treatment to respect their gender dignity and social status wherever they interact with the police system whether as complaints, victims, accused, witness or as prisoner.
- Separate prisons, police lockups, correctional centers and separate courts should be established, exclusively to deal with women.
- The police, prison, correctional and judicial personal dealing with women should be specifically trained to handle their gender-specific needs.
- Search and interrogation of women should be carried out according to strict standards of decency. Women prisoners should be escorted by women police officers.
- Basic amenities such as food, clothing, bedding, water, medicines, sanitary needs and privacy must be provided to women prisoners.

\textsuperscript{30} Ibid.
\textsuperscript{31} Ibid.
\textsuperscript{32} Punjab Police Rules, 2011 retrieved from www.punjabpoliceindia.org as visited on 5-7-2013.
2.2.6 Indian Penal Code, 1860

Custodial violence is anathema in any civilized society. It is a matter of concern and is aggravated by the fact that it is committed by persons who are supposed to be protectors of the citizens. It is strange and astonishing that custodial crimes are always committed under the shield of uniform and within the four walls of a police station or lock-up and prisons the victim being totally helpless.\(^{33}\)

United Nations Special Rapporteur on Torture held that: “Custodial violence against women very often includes rapes and other forms of sexual violence, such as touches of rape, touching, virginity testing, being stripped naked, invasive body searches, insults and humiliation of a sexual nature etc. It is widely recognized, including by former special Reporters on torture and by regional Juries prudence that rape constitutes torture when it is carried out by or at the instigation of a with the consent or acquiescence of public officials.”\(^{34}\)

In this regard in 1997 European Court of Human Rights in a case of custodial rape, acknowledged that: Rape of a detainee by an official of the state must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of the victim. Furthermore, rape leaves deep psychological scars on the victims which do not respond to the passage of time as quickly as other forms of physical and mental violence.\(^{35}\)

Custodial rape remains one of the worst forms of torture perpetrated on women by law enforcement personnel. Such sexual assault by the custodian of law on the helpless woman has touched the collective consciousness of the society and resultant reaction force the government to insert the following sections 376-B, 376-C and 376-D were inserted into the Indian Penal Code, 1860 through the Criminal (Amendment) Act, 1983, in order to provide protection to women against custodial sexual abuse, not

amounting to rape. Out of these three sections 376-B, 376-C and 376-D, section 376-C is relevant to the present study.

Section 376-C of the Indian Penal Code, 1860 Intercourse by superintendent of jail, remand home etc, this section provides “whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution taken advantage of his official position and induces or seduces any female inmate of such sexual intercourse not amounting to offence of rape, shall be punished with imprisonment.”

Under this section, the custodial sexual abuse not amounting to rape, is nevertheless made punishable because the statue proceeds on the premise that consent of women in custodial sexual act is a result of the abuse of the official position of a person, who is able to induce or entice the women into illicit sex outside lawful wedlock by holding out some allurement or other temptations which the women not in a position to refuse.\(^\text{36}\) Thus, this section of Indian Penal Code, 1860 provides protection to women prisoners against custodial sexual abuse. The Law Commission of India in its 135\(^{th}\) report on “Women in custody” has considered this section 376-C fairly adequate so far as women in custody concerns.\(^\text{37}\)

2.2.7 The Criminal Procedure Code, 1973

The Criminal Procedure Code, 1973 also provides several human rights to arrested persons, to accused and to the convicted persons. Code provides following human rights protections to women prisoners\(^\text{38}\) which should be followed by authorities such as police, court or prison authorities, while dealing with them.

- **Release of Women Prisoners on Probation of Good Conduct**

  The code provides special protection to an accused who is under twenty years of age or any women (of any age) convicted of an offence not punishable with death or imprisonment for life.

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37 P. 135.23.

According to code, if no previous conviction proved against such convicted women, the court can order release on probation of good conduct and on entering into a bond to keep the peace. Further provides that while releasing on bond, the court should have in view the age, characters or antecedents of the offenders. The object of this section is to avoid sending the first offender prison for an offence, which is not of a serious character and thereby running the risk of turning him into a habitual criminal.

- **Postponement of Execution of Death Sentence**

Section 416 of the Cr. P.C., 1973 empowers the high court to postpone the execution of death sentence awarded to a woman who is found to be pregnant at the time of execution. The high courts have been given the discretion to commute the death sentence to imprisonment for life. This provision is in consonance with the international covenant of civil and political rights, 1968.

### 2.3 JUDICIAL APPROACH REGARDING THE RIGHTS OF PRISONERS

India has a highly developed judicial system with the Supreme Court having plenary powers to make any order for doing complete justice in any cause or matter and there is a mandate in the Constitution to all authorities, civil and judicial, in the territory of India to act in aide of the Supreme Court. The scope of writ jurisdiction of the High Courts is wider than traditionally understood and the judiciary is separate and independent of the executive to ensure impartiality in administration of justice. The judiciary has a central role to play in this thriving democracy and shuns arbitrary executive action. The higher judiciary has been empowered to pronounce on the legislative competence of the law making bodies and the validity of a legal provision. The range of judicial review recognized in the higher judiciary in India is the widest and most extensive known to any democratic set up in the world. The rights recognized by the judiciary are binding on the state under Article 141 of the Constitution which

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40 *Id*, p. 694.

provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India.\textsuperscript{42}

One of the important provisions of Constitution of India is generally applied by the courts in Article 14 in which principle of equality disembodied. The rule that “like should be treated like” and the concept of reasonable classification as contained in Article 14 has been a very useful guide for the courts to determine the category of prisoners and their basis of classification in different categories.\textsuperscript{43}

Article 19 of the Constitution guarantees six freedoms to the citizens of India. Among these certain freedoms like “freedom of movement, freedom to reside and to settle” and freedom of profession, occupation, trade or business cannot be enjoyed by the prisoners because of the very nature of these freedoms and due to the condition of incarceration.\textsuperscript{44}

But other freedoms like “freedom of speech and expression” freedom to become member of an association” etc. can be enjoyed by the prisoner even behind bars and his/her imprisonment or sentenced has nothing to do with these freedoms. But these will be subjected to the limitations of prison laws.\textsuperscript{45}

Article 21 of the Constitution has been major centre of litigation as far as the prisoner’ rights are concerned. It embodies the principal of liberty. This provision has been used by the supreme court of India to protect certain important rights of prisoners. After Maneka Gandhi’s case\textsuperscript{46} this article has been used against arbitrary action of the executive especially the prison authorities.\textsuperscript{47}

The Supreme Court of India played an important role in carrying out the intentions of the founding fathers. The Supreme Court’s humanistic attitude helped in protecting the citizen’s most cherished rights not only this apex court viewed prisoners as human beings and from time to time delivered judgments protecting the fundamental

\begin{footnotes}
44 \textit{Ibid}.
45 \textit{Ibid}.
46 \textit{Maneka Gandhi v. Union of India AIR 1978 S.C. 597}.
\end{footnotes}
rights of prisoners and directed state to provide adequate facilities to prisoners strongly advocated for prison reform. The inspiring idea behind adopting this trend may be the realization of the fact that:48

Firstly, that criminals are made, not born, are curably human and not irredeemably brutish. Secondly, crime is disease and most criminals are a kind of psyche patients, such anti-social maladies must be headed by medico-legal recipes inside prisons or at centers ideologically adopted to kindle, no kill, the suppressed social being behind bars. Thirdly, judicially punitively must be conditioned by the philosophy of reform, not retribution but actually proved to be counter productive and finally medical humanism and clinical pragmatism not traditional legal torture or magic healer, plus the non-negotiable character of the quint-essential constitutional guarantees of human rights of sentences is the new testament of penology.49 Thus because of these reasons the Supreme Court has very emphatically pointed out that:

“Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison–house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to practice a profession. A man of profession would thus stand stripped of his right to hold consultation, while serving out his sentence. But the constitution guarantees other freedoms like right to acquire hold and dispose of the property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by article 21 of the constitution that he shall not be deprived of his life and personal liberty except according to procedure established by law.”50

Like you and me, prisoners are also human beings. Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner.51

49 Ibid.
While dwelling at length on the mode of treatment of criminals in prisons, the principles of punishment and other allied matters the court stated, that the role of jail authorities should be that of doctors treating criminals as patients. Also held that it is the duty of the state to respect the personality in each prisoner in the light of the preamble to the Constitution and hoped that the state will not permit the colonial hangover of putting people behind the bars and afterwards forget about them. The court felt that an atmosphere should be created in jails which can help in changing the social behavior of the criminals, so that their proneness towards crime can be reduced.\textsuperscript{52}

If you treat a man like an animal, then you must anticipate him to act like one. For every action, there is a reaction. This is only human nature. And in order for an inmate to act like a human being you must trust him to as such. Treating him like an animal will only get negative results from him. You cannot spit in his face and expect him to smile and say thank you. And it will continue to grow until the prison officials learn that an inmate is no different than them, only in the sense that he has broken a law. He still has feelings, and he’s still a human being. And until the big wheels in Sacramento and the personnel inside the prison starts practicing rehabilitation, and stop practicing zoology, then they can expect continuous chaos and trouble between inmates and officials.\textsuperscript{53}

Supreme Court of India and different High Courts regarding prison reform since the early 1990’s has recognized a broad range of rights of the prisoners in the light of the human rights initiatives. Some of the important rights of the prisoners are like.\textsuperscript{54}

2.3.1 Prisoners’ Right against Handcuffing

In order to respect the human dignity of the prisoners, the court held that “handcuffing is \textit{prima facie} inhuman and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary, absent fair procedure and objective monitoring, to inflict ‘irons’ is to resort to zoological strategies repugnant to Article 21”. In \textit{Citizen for Democracy}

\textsuperscript{52} Manoj Kumar, “Formulating a Pragmatic Policy for India: A Legal Perspective”, \textit{CILQ}, 2001, pp. 202-03.
\textsuperscript{53} \textit{Ibid.}
\textsuperscript{54} \textit{Ibid.}
through its President v. State of Assam\textsuperscript{55}, the Supreme Court expressed serious concern over the violation of law laid down by the court in its earlier decisions against handcuffing of under-trial or convicted prisoners by police authorities. The court, therefore, laid down some directions for the strict implementation of the law against handcuffing. The court lay down the rule that handcuffs, or other fetters should not be forced on a prisoner, convicted or under-trial while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back. Further laid down that even in cases where in extreme circumstances, handcuffs have to put on the prisoners, the escorting authority must record contemporaneously the reasons for doing so. Otherwise, under Article 21 the procedure will be unfair and bad in law. The court directed all ranks of police and the prison authorities to meticulously obey the directions given in this case. The court further held that any violation of any rank of police in the country or member of jail establishment shall be summarily punishable under the contempt of courts apart from other penal consequences under law.\textsuperscript{56}

2.3.2 Prisoners’ Right against Solitary Confinement

When a person is sent to jail he loses all his contacts with the outside world. The question whether he could further be isolated from his fellow prisoners by putting him into a separate and solitary cell came up before the Supreme Court in Sunil Batra v. Delhi Administration,\textsuperscript{57} where solitary confinement was challenged as violative, \textit{inter alia}, of Article 21 of the constitution of India. The Supreme Court observed that, such solitary confinement of prisoners within the jail premises would be in violative of ‘Right to Personal liberty’ and Right to Privacy’ under article 21 of the constitution.

\textsuperscript{55} AIR 1996 S.C. 2193.
\textsuperscript{57} AIR 1978 S.C. 1675.
2.3.3 Prisoners’ Right to Human Treatment

In *Sanjay Suri v. Delhi Administration* 58 in order to provide human treatment to prisoners the apex court emphasized that the incharge of jail administration from top to bottom must develop the proper approach to deal with the prisoners and under-trials. It was pointed out that the jail administration must be made to generate a sense of humanism in the officials and those in the ranks below them so that prisoners should have direct contact with those officials in getting round to the right approach in life.

2.3.4 Prisoners’ Right to Minimum Living Conditions

*In Vikram Deo Singh Tomar v. State of Bihar* 59 the Supreme Court directed for renovation of care home buildings to provide amenities to inmates like living rooms, bath rooms, toilets etc. and also to provide them adequate water and electricity, cots for sleeping, blankets bed sheets and proper clothing. The courts also directed the care home superintendent to ensure the doctor’s visit to these care homes daily.

2.3.5 Prisoners’ Right to Legal Aid

The Supreme Court of India laid down the following “benign prescriptions” for free legal aid to prisoners to be followed by the lowest to highest court in the country where deprivation of life and personal liberty of a citizen is in substantial peril. 60

1. The court should forthwith furnish a free transcript of the judgment when sentencing person to prison term.

2. In the event any such copy being sent to the jail authorities for delivery to the prisoner by the appellate, revisional or other court the official concerned shall, with quick dispatch, get it delivered to the sentenced and obtain in written acknowledgement thereof from him.

3. Where the prisoner seeks to file an appeal or revision, every facility for exercise of the right shall be made available by the jail administration.

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58 1988, Cr.L.J. 705 (SC).
4. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds, such as indigence or incommunido situation the court shall, if the circumstances of the case, the gravity of the sentence, and the end of the justice so require, assign competent counsel for the prisoner’s defence, provided party does not object to that lawyers.61

5. The state which prosecuted the prisoner and set in motion the process which deprived him of his liberty, shall pay to the assigned counsel such sum as the court may equitably fix.62

6. If the prisoner sentenced to imprisonment is virtually unable to exercise this conditional and statutory right to appeal, inclusive of special leave to appeal for want of legal assistance, there is implicit in the court under Article 142 read with Article 21 and Article 39-A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice.63

7. Prisoner/convict will be provided with free copy of judgment of session court or high court within 30 days of the pronouncement of judgment prisoner will be informed by jail superintendent about the availability of free legal aid and asked him whether he would his right to free legal aid. Judgment of session court or high court should be explained to the prisoner in the language as understood by him. Every jail will have to provide at the cost of the state exchequer copy of Vakatatnama Affidavit etc. in the form required by the High Court or Supreme Court.64

2.3.6 Prisoners’ Right to be Interviewed

In Sunil Batra v. Delhi Administration65 The Supreme Court held that lawyers nominated by the District Magistrate, Session Judge, High Court and the Supreme Court will be given all facilities to interview, right to confidential communications with prisoners, subject to discipline and security considerations. Lawyers shall make periodical visits and report to the concerned courts results of their visits.

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61 T.S.N. Sastry, India and Human Rights : Reflections, concept publishing company New Delhi, 2005, 136
62 Ibid.
65 AIR 1978 S.C. 1675.
2.3.7 Prisoners’ Right to Maintain Contact with the Outside World

While recognizing the importance of prisoner’s right to contact with their family members the supreme court of India has ruled in *Sunil Batra’s*, case held that visits to prisoners by family and friends are a solace in isolation, and only a dehumanized system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellowmen, parents and other family members cannot be denied in the light of Article 19 and its sweep. Moreover, the whole rehabilitative purpose of sentences is to soften, not to harden and this will be promoted by more such meetings. A sullen, forlorn prisoner is a dangerous criminal in the making and the prison is the factory. There is no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. Subject to considerations of security and discipline, liberal visits by family members, close friends and legitimate callers, are part of the prisoners’ kit of rights and should be respected.

Similarly, the Supreme Court of India in the *Francis Coralie Mullin vs. The Administrators, Union Territory of Delhi* had stated that as part of the right to live with human dignity and therefore, as a necessary component of the right to life, a prisoner would be entitled to have interviews with the members of his/her family and friends and if any prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends is arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of Article 14 and 21 of the Constitution.

2.3.8 Prisoners’ Right to have Adequate Accommodation

In *S.P. Anand v. State of M.P.*, court held that a convict lodged in jail must have reasonable accommodation to live a healthy life and enjoy his personal liberty to the extent permitted by law.

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66 *AIR* 1978 S.C. 1675.
67 Para.152.of the *Punjab Jail Manual*, 1996,
69 *Francis Coralie Mullin vs. The Administrators, Union Territory of Delhi* *AIR* 1981 S.C. 746.
70 *AIR* 2007, MP 167.
2.3.9 Prisoners’ Right against Torture and Custodial Violence

In *D.K. Basu’s case*\(^ {71}\), Supreme Court held the principle that (i) Article 21 of the Constitution could not be denied to convicts except according to the procedure established by law (ii) any form of torture or cruel, inhuman or degrading treatment falls within the ambit of Article 21, whether it occurs during investigation or otherwise, monetary or pecuniary remedy is an appropriate and indeed effective and sometimes the only suitable remedy for redressal for established infringement of the fundamental right to life of the citizen by the public servants and the state vicariously liable for their act.

2.3.10 Prisoners’ Right to Leave and Special Leave

All the persons have right to apply for the temporary release from the prison on the specified grounds mentioned in the local act or jail manual, as the case may be. The Bombay high court held that release of furlough is a legal and substantial right of the prisoners and denial of the same must be based on material facts indicating that the same would disturb public peace and tranquility.\(^ {72}\)

2.3.11 Prisoners’ Right to Judicial Remedy

In *Charles Sobraj v Superintendent Central Jail*,\(^ {73}\) court held that imprisonment does not spell farewell to fundamental rights laid down under part III of the constitution. Prisoners retain all rights enjoyed by the free citizens except those lost necessarily as an incident of confinement. Therefore, it is court’s duty and authority to ensure that the judicial warrant which deprives a person of his life and liberty is not exceeded, subverted or stultified.

2.3.12 Prisoners’ Right to Parole and Furlough

In *Sharad Keshav Mehta v State of Maharashtra & others*,\(^ {74}\) court held that a prisoner have the substantial and legal right to be released on furlough after having complied with the requirements of the rules framed for release of prisoners on furlough.

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\(^ {71}\) *AIR* 1997, S.C. 610.
\(^ {73}\) *AIR* 1978, S.C. 1594.
\(^ {74}\) MANU/MH/0054/1988 (Criminal WP NO. 376 of 1987)
2.3.13 Prisoners’ Right to Basic Human Needs

A Convict Prisoner in the Central Prison v State of Kerala\(^7\), court observed that while one does not expect life in prison to be the same in the free world, yet the human dignity of the prisoner must be maintained under all circumstances. Imprisonment may strip a person of certain facets of life, but he does not become a non-person and rights that human dignity requires and circumstances justify, must be granted to him. The court directed

- The state shall build sufficient number of prisons to accommodate prisoners.
- The state shall effectively implement segregation, keeping habitual offenders away from fresher’s, to avoid the possibility of hard core criminals turning jails into schools of crime.
- The state will take appropriate action to pay reasonable wages to prisoners, so that, motivation for work is generated.
- Sufficient provision will be made to segregate civil prisoners and military prisoners, from prisoners convicted of criminal charges.
- Proper arrangements will be made for escort of prisoners from jails to courts and back. A rational parole policy must be evolved by the state.
- Sanitary napkins which are not included in the clothing supplied to female prisoners, should also be supplied.
- Necessary facilities for the jail staff must be provided as a congenial working environment alone can ensure a contented service.
- Reservation of a nominal percentage of jobs for convict prisoners of good behaviour can be an incentive and it would be consistent with the concept of rehabilitation.
- Educational and recreational facilities, within reasonable limits may be provided in prisons.

\(^7\)1993 Cr. L.J. 3242.
2.3.14 Prisoners’ Right to Redressal of Grievances

To provide redressal of grievances, in Madukar & Jambhale v State of Maharashtra & others, the court directed the state and the prison staff that grievance deposit boxes should be maintained by or under the orders of the district magistrate and the session judge. On the question of the grievance redressal procedures, the court issued several directions such as grievance box should be kept at a conspicuous place inside the prison under lock and key, and key will remain exclusively with the district judge. Complaint registered should be maintained in prison office which shall contain the complaints found in grievance deposit box and action taken in respect of such complaints and for ventilating the legal grievance of prisoners judges should personally visit the jails situated in their jurisdiction. Lawyers should also be nominated to make visits to jails. In Rama Murthy v. State of Karnataka, the Supreme Court observed that, whenever a complaint is lodged by the prisoners against the torture or inhuman treatment meted out, the appropriate action against the delinquent must be taken immediately. Besides, the court also opined that the prisoners who lodge complaint should be properly protected from the jail authorities for having lodged a complaint. This clearly shows that, even a prisoner also has the right to lodge complaint against the jail authorities if they are subjected to third degree punishment or inhuman treatment.

2.3.15 Right to Evoke the Writ of Habeas Corpus against Prison Authorities for Excesses

In Sunil Batra (II) v. Delhi Administration, the Supreme Court held that when every attempt to seek redress for one’s genuine complaint fails, the prisoner can straightway appeal to the high court for the issuance of a writ of Habeas Corpus. This right would be available to any prisoner against any action of the jail authorities which is not commensurate with the sentence passed by the court or other actions expected of the prison authorities. If this action fails to bring in the required change, the prisoner can move petition to the Supreme Court for the protection of his fundamental rights. This is guaranteed fundamental right of every citizen under the constitution.

76 1987 Mah LJ 68.
77 AIR 1997 S.C. 1739.
79 AIR 1980 3SCC 488 (522).
2.3.16 Prisoners’ Right to have Information about Rights

In order to make aware about rights available to prisoners in jails, in Sunil Batra’s Supreme Court of India ruled that the State Government should take steps to prepare in Hindi and other regional languages a Prisoner’s Handbook of Rights and circulate copies to be kept in prisons to bring legal awareness to the inmates.  

2.3.17 Prisoners’ Right to Work

In Hiratal Mallick v. The state of Bihar, Justice Krishna Iyer laid the emphasis on the constructive and curative work with special reference to the needs of the prisoner on having a healing effect on the criminal for bringing a change in the personality. The mechanical chores and the soulless work done in prisons and the coercion in prison wardens may have counter effects therefore the courts directed to prescribe the reformatory type of work in Bihar prisons within the limits of the prison rules operative in the state. There must be humanizing atmosphere in jails.

2.3.18 Prisoners’ Right to Reformatory Programmes

The treatment of persons sentenced to imprisonment has to aim at establishing in them the will to lead law abiding and self supporting lives after their release and to enable them to do so. The treatment of prisoners through reformatory programmes has to be such as will encourage their self-respect and develop in them the sense of responsibility. Under this umbrella, prisoners have the right to education, counseling, learning of meaningful skills, vocational training, meditation, etc.

2.3.19 Prisoners’ Right against Fellow Prisoners

In Kewal Pati v. State of U.P., about prisoners right to protection and security against their fellow prisoners, court held that it is duty of the prison authorities to ensure the life and security of the prisoners and that the killing of a prisoner by a co-prisoner would amount to a deprivation of life in violation of article 21.

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81 Id, 109.
82 1977, S.C. (Cr.) 538.
85 1995 3SCC 660
2.3.20 Prisoners Right to Security and Safety

In *Sheela Barse v. State of Maharashtra*\(^{87}\), while giving the answer to question, whether the prisoners should be provided with security and safety in the prison, the Supreme Court observed that, the prisoners too have the right to seek security and safety for life inside the jail and issued directions to all State Governments to provide adequate safety and security to all the prisoners including the women prisoners.\(^{88}\)

2.3.21 Women Prisoners’ Right to Pre-natal and Post-natal Care

In *R.D. Upadhayaya Case v. State of Andhra Pradesh & others*\(^{89}\), the Supreme Court issued the following guidelines for the Union Government, State Government, Union Territories and State Legal Services Authority to provide pre-natal and post-natal care to the women prisoners and directed them to submit a compliance report in four months.

- Before sending a pregnant woman to jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery, as well as for providing adequate pre-natal and post natal care for both, the mother and the child.

- When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady medical officer shall report the fact to the superintendent.

- As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on.

- After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.

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\(^{87}\) *AIR* 1983 S.C. 378.

\(^{88}\) The Lawyers, May 1990, p. 5.

\(^{89}\) *AIR* 2006 S.C. 1946.
• Gynaecological examination of female prisoners shall be performed in the District Government Hospital.

• Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.

**Child Birth in Prison**

• As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases

• Constituting high security risk or cases of equivalent grave description scan be denied this facility.

• Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

• As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

**2.4 INTERNATIONAL PERSPECTIVES WITH REFERENCE TO WOMEN PRISONERS**

Under the International perspective, researcher has made an effort to review the rights available to women prisoners in the form of protections under both the general as well as the specific human rights instruments relating to prisoners.

**2.4.1 Universal Declaration of Human Rights, 1948**

Human Rights, by definition, belong to everyone, based on their humanity without regard to conduct and status. The key human rights documents are very clear in their statement of the intrinsic “dignity and worth of the human person and make no exception for those who have *broken* the law or otherwise violated the social contract. The significance of these rights to people deprived of their liberty is also clearly spelled out in the Universal Declaration of Human Rights 1948.90

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Based on the 18th century principle of individual freedom and 20th century principle of liberal democracy, the Universal Declaration of Human Rights was adopted as a “common standard of achievement for all people and all nations to promote, respect for these rights and freedoms, to secure their universal and effective recognition and observe” provides that “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.” The declaration contains not only civil and political rights but also the economic, social and cultural rights. About these rights, declaration reaffirms that “Everyone is entitled to all these rights and freedoms without distinction of and kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Though, Declaration legally non-binding in the beginning: but due to incorporation of human rights provisions in many national constitutions, frequent reference in United Nations resolutions and declaration to the “duty” of all states to observe faithfully the Universal Declaration of Human Rights, some decisions in various national courts that refer to the Universal Declaration as a source of standards for judicial decisions etc., it has become the foundation for establishing obligatory legal norms to govern international behavior with regard to rights of individuals. In respect of persons deprived of liberty the Declaration showed its concern for prisoners through some of its provisions. Article 6 incorporates the vital principle that everyone has the right to recognition everywhere as a person before the law, a principle signifies that a prisoner does not cease to be a “person’ inside a jail and is, as such, entitled to receive a reasonably decent and civilized treatment in the prison.

2.4.2 International Covenant on Civil and Political Rights, 1966

Another key human right document is the International Covenant on Civil and Political Rights, 1966. It elaborates the civil and political rights set forth in the universal declaration of human rights. Right contained in the covenant applies to every human

92 Article 5. of the Universal Declaration of Human Rights, 1948.
93 Id, Art. 2.
being except few. As it is a legally binding, the state parties to the covenant are obliged to undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recoganised under the covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status.\textsuperscript{96} It also contains principle of non-discrimination that require the state to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present covenant.\textsuperscript{97}  
Covenant states that:

- All persons deprived of their liberty should not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that respect for the dignity of such persons must be guaranteed under the same conditions as far that of free persons.\textsuperscript{98}  
- Convicted persons should be segregated from the accused persons and subjected to separate treatment appropriate to their status.\textsuperscript{99}  
- For persons who are convicted, the prison system should not only be retributory but should focus on reformation and social rehabilitation of the prisoners.\textsuperscript{100}  
- Death sentence should not carried on the pregnant women prisoners.\textsuperscript{101}  
- Prisoners sentenced to death have right to seek pardon or commutation of the sentence.\textsuperscript{102}

2.4.3 Convention against Elimination of All Forms of Discrimination against Women, 1970\textsuperscript{103}  
Besides these, basic human rights provisions, in order to implement the provisions contained in these basic human rights documents to eliminate all forms discrimination against women, in 1970, the United Nations adopted the Convention on

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{96} Art 2 (1).
\item \textsuperscript{97} Art. (3).
\item \textsuperscript{98} Art. 10(1) of \textit{International Covenant on Civil Political Rights} 1966.
\item \textsuperscript{99} Id, Art. 10(2)
\item \textsuperscript{100} Id, Art. 10(3).
\item \textsuperscript{101} Id, Art. 6(5).
\item \textsuperscript{102} Art. 6(4).
\item \textsuperscript{103} India is a signatory to CEDAW, (the convention on the elimination of the forms of discrimination against women, having ratified it on 256.1993 with two reservations which involves article 16(2) 29(1) of the conventions.
\end{itemize}
\end{footnotesize}
Elimination of All Forms of Discrimination Against Women. This convention is the important landmark in the journey towards realization of women’s rights in the world. It is often described as international bill of rights of women. This convention is the culmination of more than thirty years of work by the United Nations Commission on the Status of Women.\textsuperscript{104} The content and the structure of the convention have been shaped by both the international human rights movement and women’s movement so that its unique and almost revolutionary text reflects the major aims achieved by both of these movements in defining women’s human rights.

The convention in its Preamble expressed the concern that despite the efforts by the United Nations to eliminate discrimination against women, extensive discrimination against women continued to exist in the world.

With 30 Articles organized in six parts Convention defines the Discrimination against Women as “any an distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The convention talks about discrimination of ‘effect’ and ‘purpose’ thus manifesting a comprehensive perception which covers both ‘direct’ or ‘indirect’ or ‘international’ and un-international forms of discrimination. The definition also makes it clear that any distinction, exclusion or restriction on the basis of sex that in any way obstructs women’s enjoyment of their human rights is discrimination. By specifically referring to all women’s right to full enjoyment of their human rights regardless of their marital status, considers different attribution of rights to ‘unmarried’ ‘married’ widowed’ women etc. as essential discriminatory.

Similarly, the Article’s references to not only political, economic, social, cultural and civil areas but also any other field’ renders the instruments responsive to any and all existing or future forms of discrimination thereby reflecting the progressive and expensive nature of the rights foreseen in the women’s convention.

\textsuperscript{104} Sally Engle Merry, \textit{Human Rights and Gender Violence}, Oxford University Press, New York, 2006, p. 73-76.
The convention recited, in potent language, what state parties’ needs to do in order to ensure elimination of discrimination against women. It obligates states to:105

1. Incorporate the principle of equality of men and women in their legal system abolish all discriminatory laws and adopt appropriate measures prohibiting discrimination.

2. Establish tribunals and other public institutions to ensure the effective protection of women against discrimination.

3. Ensure elimination of all acts of discrimination against women by person, organizations and enterprises.

4. Repeal all national penal provisions which constitute discrimination against women.106

Convention against Elimination of All Form of Discrimination Against Women does not specifically refer to the situation of women deprived of their liberty. However, the human rights committee has affirmed that “Persons deprived of their liberty enjoy all the rights set forth in the covenant, subject to restrictions that are unavoidable in a closed environment.” The same applies with regard to the rights set forth in CEDAW; women in prison enjoy the same rights not to be subject to gender based discrimination as other women.107

The Human Rights Committee’s General Comment 28 gives guidance as to what non-discrimination against women requires for women in prison: as regard Article 7 and 10 states parties must provide all information relevant to ensuring that the rights of persons deprived of their liberty are protected on equal terms for men and women. In particular, states parties should report on whether men and women are separated in prison and whether women are guarded only by female guards states parties should also report about compliance with the rule that accused Juvenile female shall be separated

105 Art. 2 of CEDAW 1970.
from adults or on any difference in treatment between male and female persons deprived of liberty, such as, for example, access to rehabilitation and education programmes and to conjugal and family visits. Pregnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times surrounding the birth and while caring for their newly-born children; states parties should report on facilities to ensure this and on medical and health care for such mothers and their babies.\(^\text{108}\)

2.4.4 Declaration on the Elimination of Violence against Women, 1993

The Declaration on the Elimination of Violence against Women (DEVAW) was adopted by the United Nations General Assembly in 1993. It was the first international human rights instrument adopted by the United Nations that specifically addresses the violence against women. DEVAW is the product of years of advocacy by non-governmental organizations and women’s group. Although not a binding treaty, it is applicable to all the members of the United Nations. Like other United Nations declarations, DEVAW is regarded as a source of international law. Declaration recognizes that violence against women violates women’s rights and fundamental freedoms and poses an obstacle to women’s social, economic and political equality. By using the term “violence against women”, the declaration addresses violence that is committed overwhelmingly by men against women. It defines the problem broadly and recognises that it encompass “gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women”. It includes violence that occurs primarily in the family, including battering, sexual violence, female genital mutilation, and other traditional practices harmful to women, as well as violence committed in the community, such as rape, sexual abuse, sexual harassment at work and in other institutions, trafficking in women, and forced prostitution.\(^\text{109}\) Therefore, it calls the states and the international community to take all appropriate measures to abolish existing laws, customs, regulations and practices which are discriminatory against

\(^{108}\) Id., p. 7.

women and to establish adequate legal protection for equal rights of man and women, in particular.

(a) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law.

(b) The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.\(^{110}\)

Declaration goes on to require that states should: take measures to ensure that law enforcement officers and public responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them the needs of women.\(^ {111}\)

All provisions of penal codes which constitute discrimination against women shall be repealed for the eradication of violence against women.\(^ {112}\)

2.5 **UNITED NATIONS INSTRUMENTS\(^ {113}\) RELATED TO PRISONERS**

The major contribution of the United Nations Crime Prevention and Treatment of Offenders has been the laying down of Standard Minimum Rules for Treatment of Prisoners which constitutes its major standard setting efforts in the area of criminal justice administration.

2.5.1 **United Nations Standard Minimum Rules for Treatment of Prisoner, 1955**

The International and Penitentiary Commission made an endeavour in 1929 to work out some important rules called standard minimum rules for the treatment of prisoners which could be uniformly applicable throughout the world when thousands of men especially women and children were tortured and killed in prison walls in a brutal manner. The first record of a concrete proposal of these Standards Minimum Rules was made to International Prison Commission at Berne on July, 1926. This proposal was

\(^{110}\) Article 2.

\(^{111}\) Art. 4, Para (1).

\(^{112}\) Article 7.

\(^{113}\) The term Instrument covers are the different documents held that embody human rights standards, legally binding treaties, covenants and conventions (hard law) as well as commitment expressed in declarations, resolutions, guiding principles, code of conduct etc.
well received by the commission. Eventually, a set of fifty-five rules was presented to the next IPPC congress held at Prague in 1930. After further studies a first draft was produced in 1933 and endorsed by the League of Nations. However, that attempt failed due to variation in geographical and political conditions of different countries. Subsequently in 1949, the United Nations convened a meeting of a group of experts to consider the problem of crime prevention and to frame standard minimum rules for this purpose. Consequently, a draft of standard minimum rules for the treatment of was submitted by the first congress on prevention of crime and treatment of offenders, United Nations organization Geneva in 1955, and approved by the UN Economic and Social Council in 1957.\textsuperscript{114}

These rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consequences of contemporary thought and the essential elements of the most adequate systems of today to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions. In view of the great variety of legal, social, cultural economic and geographical conditions of the world, it is evident that all the rules may not be capable of application in all places and at all time. They should, however, serve to simulate a constant endeavour to overcome practical difficulties in the way of their application in the knowledge they represent, as a whole, the minimum conditions which are accepted as suitable by United Nations. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole.\textsuperscript{115}

The standard minimum rules among the important principles it articulates are:

- **Separate Accommodation for Women Prisoners**

  In order to protect the inherent dignity of women prisoners, standards requires the states to provide separate institution for the women prisoners. Further, if due to non-availability of proper space male and female prisoners kept in same institution the


\textsuperscript{115} Ibid.
premises, where female inmates kept should be entirely separate so that no business can take place between the male and female.  

- **The Standard Minimum Rules also include Special Requirement Covering Pregnancy, Children and Childcare**

It provides that women institutions should have special accommodation for all necessary post and pre-natal care and treatment. Timely arrangements should be made for children to be born in a hospital outside the institution. The fact that child is born in prison should not be mention in the birth certificate, when birth registration of the child takes place\textsuperscript{117}. The stigma that women who have been in prison are faced with on return to their communities should not be perpetuated through their children.\textsuperscript{118}

- **Measures Necessary for Preventing Abuse of Women Prisoners by Male Prisoners or Prison Officials are Clearly**

Provides that an institution which contains both male and female prisoners, part of the institutions where women prisoners confined should be under the authority of responsible women officer. She should have the custody of the keys of all part of the institution. No male member of the staff should grant access to any part of the institution unless accompanied by a women officer. Women prisoners shall be attended and supervised by women officers only.\textsuperscript{119}

- **Prenatal and Post-natal Care and Treatment**

There should be special accommodation for all necessary pre-natal and post-natal care and treatment.\textsuperscript{120}

- **Provisions for Infants**

Where nursing infants are allowed to remain in the institution with their mothers, provisions shall be made for a nursery staffed by qualified persons, where infants shall be placed when they are not in the care of their mothers.\textsuperscript{121}

\textsuperscript{116} Rule 8.
\textsuperscript{117} Rule 23.
\textsuperscript{119} Rule 23(1).
\textsuperscript{120} Rule 23(2).
\textsuperscript{121} Ibid.
2.5.2 KYIV Declaration Women’s Health Right in Prison, 1995

In 1995, the World Health Organization’s Regional Office for Europe launched the health in prison project, supported by the WHO collaborating centre for health and prisons in the department of health, United Kingdom. The project works within a network of countries committed to protecting and promoting the health in prisoners in the interest of prison of staff and of public health. On the request of the member states of Health in Prison Project involved in the project, WHO Heath in Prison Project, together with partner organizations and experts and with the support of the UNDC, QCEA, QUNO, the Sainsbury centre for mental health, the AIDS foundations east-west and the European monitoring centre for drugs and drug addiction has reviewed all issues affecting women’s health in the criminal justice system and has especially considered the gross inequalities in women’s health in prisons founded that current arrangement in criminal justice system for dealing woman prisoners often fail to meet their basic and health needs are therefore for short of what is required by human rights, by accepted international recommendations and social justice and therefore adopted the KYIV Declaration on Women’s Health in Prisons in 1995.122

The declaration held that following key services should be provided to the women prisoners in the prisons in order to meet their basic and gender health needs.123

- **Complete and Detailed Medical Check Up**

  Complete and detailed medical checkup should be carried out of women prisoners when they enter into prison and throughout their stay in prison. This complete medical check up should be done to know their:

  (i) Socio-economic and educational background.

  (ii) Health and trauma histories.

  (iii) Current health status.

  (iv) Evaluation of any skill they have or required.

- **An individual Care, Treatment and Development Plan for Women Prisoners**

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123 *Id.* Para 4.3.
Health care, treatment and development plan for women prisoners should be developed by the joint efforts of different health care providers and all staff likely to involve in women prisoners care and custody in consultation with women themselves.

- **Primary Health Care Services in Prison**
  
  Primary health care services available to in the prison should be made clear to women prisoners on their entry into prison with the help of pamphlets written in an understandable language.

- **Awareness about Specialist Health Care Services in Prison**
  
  Women prisoners should be made aware about specialist health care programmes which are quickly provided and adjusted to meet their needs such as post-traumatic stress disorder, chronic health conditions, HIV and AIDS counseling and support, hepatitis, tuberculosis and other infectious diseases etc. and how to access these specialized health care, programmes must be explained to women while discussing her individual care plan.

- **Pre-release Preparation and Continuity of Care**
  
  On release from prison, women prisoners have to face greater disgrace and rejection from their communities as compared to the male prisoners. Due to stigmatization, finding the safe and secure accommodation always remains difficult from them. Therefore the release of women prisoners requires specific planning and support. Hence, in order to facilitate the reintegration of women prisoners into the society after release, pre-release preparations should be adequately planned and in order to ensure the continuity of care and access to health and other services, all such services should have good links to the services in the community.

2.5.3 **WHO Guidelines on HIV Infections and AIDS in Prisons, 1996**

These guidelines were prepared on the basis of technical advice provided to World Health Organization prior to and during a consultation of experts convened in Geneva in September 1992. The guidelines provide standards from a public health perspective which prison authorities should strive to achieve in their efforts to prevent HIV transmission in prisons and to provide care to those affected by HIV/AIDS. WHO
guidelines are divided into fifteen sections ranging from general principle that the prisoners have the right to receive health care “equivalent to that available in the community without discrimination.” The Guidelines contains the following specific recommendation relating to care and support of HIV-positive women prisoners.

(a) **Special Need of Women Prisoners**

Prison authorities should provide special attention to the gender-specific needs of women prisoners.\(^{125}\)

(b) **Training for the Staff**

Staff dealing with detained women should be trained as how to deal with the psychological and medical problems associated with HIV infections in women.

**Women with HIV-Infection**

(a) Women prisoners with HIV-infection should be provided knowledge about the likelihood of HIV transmission from mothers to child and through sexual contact and services specifically designed to meet their needs.

(b) They should be provided condoms or skills in negotiating safer sex in order to protect themselves from HIV infection during imprisonment or while release on parole.

(c) Counseling on family planning should be provided to them.

(d) HIV-infected women should not be compelled to terminate their pregnancies.

(e) Such women should be able to take care for their young children while in prison regardless of this HIV status.\(^{126}\)

**Beside these recommendations the prison authorities should make following services and facilities available in all prisons holding women.**

(i) Gynecological consultations at regular intervals, particular attention should be paid to the diagnosis and treatment of Sexual Transmitted Diseases.

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\(^{125}\) Id, Guideline H (44)

\(^{126}\) Id, Guideline H (45).
(ii) Family planning counseling services oriented to women’s needs.

(iii) Care during pregnancy in appropriate accommodation.

(iv) Care for children born to HIV-infected mothers.

(v) Knowledge to use condoms and other contraceptives during detention and prior on parole periods or on release.\textsuperscript{127}

Besides these, above stated international rules, standards, conventions and guidelines regarding the treatment of prisoners the increasing concern over the violation of human rights in general and the specific women’s rights of female prisoners adversely affected by their incarceration and improper treatment as a result of inadequate prison systems and regimes, led the many countries and international community to take steps to seriously address the problems of the women prisoners.

\subsection*{2.5.4 United Nations Standards Minimum Rules for the Treatment of Prisoners and Non-custodial Measures for the Women Offenders. 2010}

Therefore recognizing the need to provide global standards with regards to the distinct needs of the women prisoners and taking into account the above stated resolutions adopted by different United Nations bodies, in which members states were called upon to respond to the needs of women prisoners, the United Nations Congress on Crime Prevention and Criminal justice, adopted the Standards Minimum Rules for the Treatment of Women Prisoners and Non-custodial Measures for the Women Offenders, widely known as the “Bangkok Rules.”\textsuperscript{128}

The main credit for the of adoption of these rules goes to the Thailand, because it is Thailand who deems it timely and appropriate to invite the world community to use the original standard minimum rules for the treatment of offenders as a base to develop a more comprehensive set of standards specifically geared towards female offenders/prisoners. Thailand has proposed a new approach to women prisoners through the draft United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measure for Women Offenders which has been introduced to the world community

\textsuperscript{127} \textit{Id}, Guideline H (46).

under the project called “Enhancing Lives of Female Inmates or “ELFI” which stems from the Kamalanjai project and is based on the premise that, with today’s changing world.\(^{129}\)

The issue of women in prison has become more complex. The existing regimes on the treatment of prisoners and offenders, thorough appropriate for men are either silent or not adequate for the gender-specific needs and realities of women.\(^{130}\)

The main purpose of these rules is simply to create a gender equality approach to the treatment of women prisoners and offenders as well as to narrow the gap of negligence to fulfill specific needs of women prisoners. These rules do not replace the standards minimum rules for treatment of prisoners and Tokyo Rules, instead supplement and complement them as these are inspired by principles contained in various United Nations conventions and declarations of existing international law. These 70 rules are addressed to prison authorities and criminal justice agencies including policy makers, legislators, the prosecution services, the judiciary and the probation service. Therefore, these authorities are obliged to follow these rules in the treatment of women prisoners.\(^{131}\)

Here the researcher has made the brief discussion of these rules.

- **Registration:** The prison authorities should maintain detailed register containing whole information about women prisoners and their children.

- **Allocation of Prison:** Women should allocated prisons close to their homes or such places where they can easily receive social rehabilitation services.

- **Personal Hygiene of Women Prisoners:** Accommodation available to women prisoner should provide sanitary towels, regular supply of water, for the personal


\(^{130}\) Ibid.

care of their children and women, in particular for women involved in cooking and those who are pregnant, breast feeding or menstruating.

- **Health Care:** Complete medical checkup should be done of women prisoners in order to know their entire health history and to provide primary health care needs.

- **Medical Confidentiality:** The medical confidentiality of women prisoners should be respected at all times.

- **Medical Checkup for Children:** Children accompanied to women prisoners should provide complete medical check up.

- **Gender-Specific Health Care Services:** Health care services equivalent to those available in the community should be provided to the women prisoners. Medical examination of women prisoners should be done by female doctor or nurse. In case of medical examination by male doctor, should be carried out only in the presence of the female staff members only.

- **Mental Health Care:** Women Prisoners suffering from mental illness should be provided gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes.

- **Awareness about HIV Prevention, Treatment, and Care:** Prison authorities should provide women prisoners suffering from HIV: Education and awareness about HIV prevention, treatment and care in the prison.

- Specialized treatment program should be made for substance abusers.

- **Preserve Dignity during Searches:** In order to preserve the dignity of women prisoners, personal searches of women prisoners should be carried out by the female staff only.

- **Protection from Violence:** Punishment by close confinement, segregation and instrument of restraint should not be applied/used during labour, birth and immediately after birth of the child.
• **Classification Methods for Women Prisoners:** Prison authorities should develop gender-specific classification methods in order to ensure the treatment, early rehabilitation, and reintegration of women prisoners into the society.

• **Prison Region:** Prison regions for women prisoners should be flexible enough to address the needs of pregnant women, nursing mothers, and women with children.

• **Social Relation and After Care:** Pre and Post-release reintegration programme for women prisoners should be developed by prison authorities in co-operation with probation, social welfare services, and NGOs. The prisoner authorities should use open prisons, home leave, Open prisons halfway houses, and Community-based programmes and services in order to re-establish women prisoners contact with their families.

• **Additional Support for Released Women Prisoners:** Provisions should be made to provide additional support to released women prisoners in order to ensure their successful re-integration in the community.

• **Foreign Nationals:** Government should make efforts to transfer the non-resident foreign national women prisoners to their home country as early as possible during their imprisonment.

• **Minorities and Indigenous Peoples:** Prison authorities should recognize the distinctive needs of women prisoners belonging to religious and cultural backgrounds.

### 2.6 REGIONAL PERSPECTIVES WITH REFERENCE TO WOMEN PRISONERS

In addition to national and international developments, prisoners’ rights have increasingly found recognition and protection at the regional level also.\(^\text{132}\)

In international law the term ‘region’ may mean an area embracing the territories of a group of states. The states should bind together by the ties of common interest, i.e. there should at least be an identity of certain minimum values and standards. Thus, a region may be created by grouping the states on the basis of economic, social, cultural or political factors. Regional arrangements may be created for

\(^{132}\) Retrieved from Books.google.co.in/books?isbn=9067048887 as visited 5-12-2013.
a wide range of purposes, such as, security, defence, political or socio-economic functions and responsibilities. States constituting a regional arrangement are therefore a more limited community than those of international institutions. Such organizations are established as it is easier to develop a sense of community in a compact geographical area.\footnote{H.O. Aggarwal, \textit{International Law and Human Rights}, Central Law Publication, Allahabad, 15\textsuperscript{th} ed. 2008, p. 847.}

The United Nations human rights systems provides the main architecture of the international human rights protection regime, and regional human rights protection mechanism constitute one of the fundamental pillars by complementing and often improving it on a regional level.\footnote{European Parliament Director-General for External Policies: Policy Department: The Role of Regional Human Rights Mechanism, retrieved from at \url{www.europarl.europa.eu/.../903-recomchapteroniahrrsystem-en.pdf.}, as visited on 5-7-2013.}

Regional systems of human rights apply to a limited number of states, usually states found in close geographical proximately and are more accessible to people in so far as the salient bodies are located in the same geographical areas. The similar political, cultural and economic similarity enables the regional systems to offer better enforcement potential than their international contemporary’s states. Regional sanctions can be more effective than other international sanctions.\footnote{H.O. Aggarwal, \textit{International Law and Human Rights}, Central Law Publication, Allahabad, 15\textsuperscript{th} ed. 2008, p. 847.} In the beginning, the United Nations considered itself to have prime jurisdiction over establishing a universal system of human rights. Regional developments were always viewed by the United Nations as undermining the process of developing international universal rights. Therefore, the United Nations charter has not made any provision for the possibility of the development of regional human rights system. The only reference was made to regional system was in relation to peace and security.\footnote{European Parliament Director-General for External Policies: Policy Department: The Role of Regional Human Rights Mechanism, retrieved from at \url{www.europarl.europa.eu/.../903-recomchapteroniahrrsystem-en.pdf.}, as visited on 5-7-2013.}

\subsection*{2.6.1 Initiative taken by United Nations to promote Regional Arrangements}

In order to promote the regional arrangement, the General Assembly of the United Nations, in 1977 adopted a resolution on “Regional Arrangement for the Promotion and Protection of Human Rights”, while recognizing the importance of
regional co-operation for the promotion and protection of human rights and fundamental freedoms, appealed the states without regional system to consider agreements with a view to establish within their respective regions of suitable regional machinery for the promotion and protection of human rights.\footnote{Janusz Symonides (ed.), \textit{New Dimensions for Challenges for Human Rights}, Rawat Publications, New Delhi, 2003, p.31.}

Vienna Declaration and Plan of Action gave a positive evaluation of regional arrangements, and emphasized the fundamental role of the regional arrangements in the promotion and protection of human rights. The Declaration held that regional arrangements reinforce the universal human rights standards as contained in international human rights instruments and their protection.\footnote{\textit{Ibid}.}

The World Conference on Human Rights also reiterated the need to establish regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist.\footnote{\textit{Ibid}.} Currently there are three major Regional Human Rights Systems.

(i) The African Human Rights System

(ii) The Inter-American Human Rights System

(iii) The European Human Rights System

\subsection*{2.6.2 European Convention on Human Rights and Fundamental Freedoms, 1953}

European Convention on Human Rights and Fundamental Freedoms is the principle convention of the Council of Europe, came into force in 1953. It is often heralded as the greatest achievement of the council of Europe in the field of human rights. It was stemmed from wish to provide a bulwark against, which had spread into states in central or Eastern Europe after the Second World War. It was also reaction to the serious human rights violations that Europe had witnessed during the second world ward.\footnote{D.J. Harr’s Mo’ Boyle and Warbrick, “Law of the European Convention on Human Rights”, Butter Worths, London, 2000, p. 135.}
This convention is a part of a network of international human rights treaties of universal or regional application. It has inspired the regional systems of human rights protection setup on the American and African continent, contains the civil and political rights. These rights has been supplemented by the addition of further rights by first, fourth, sixth and seventh protocol to the convention that are binding upon those states that have ratified them.\textsuperscript{141}

It is a treaty under which the signatory states accept certain duties, consisting mainly in recognizing that individuals have certain rights. It is composed of statement of rights and freedoms which the contracting parties “shall secure to every one within their jurisdiction”. It provides that the protection of human rights asserted by it should be effected by three bodies. (i) The Commission (ii) The European Court of Human Rights.

\textbf{Commission:} Complaints of violations of the provisions of the European convention are made to commission, (the right of an individual to make such a complaint) (Art. 25 of the European convention) commissions first task is to decide whether the application is admirable or not. Its decision on the question of admissibility is final. Once an application is received as admissible the commission goes on to establish the fact and try to secure a friendly settlement between the state and the applicant when the settlement is reached, the proceedings are ended is reached, the proceedings are ended, and the commission publish the report.

\textbf{European Court:} Either the commission or the government concerned in the application may refer the matter to the European court within three months of the transmission of the commission report, provide that the state concerned has accepted the compulsory jurisdiction of the court or has accepted it for the particular case in question. The court considered the commission report together with the oral and written submission of the state. The court’s judgment is final and is pronounced in open court. It has power to award compensation to the injured party. In order to give effect to the provisions of the convention in respect to the prisoners, the council of Europe adopted

\textsuperscript{141} \textit{Ibid.}

2.6.2.1 European Prison Rules, 2006

Prison standards reflect the commitment to treat prisoners firstly and fairly. In the context of Europe, the first attempt to set such standards in Europe was made in 1973 with introduction of the European prison rules which were closely modeled on the standard minimum rules for the treatment of prisoners, by the council of Europe.

The reasons for adopting a European variant of prison standards following the adoption of standard minimum rules were to boost the application of the norms contained in standard minimum rules in Europe to convey contemporary penal policy accurately. In 1987, these rules were revised thoroughly to embrace the needs and aspiration of prison (authorities) administrators, prisoners and prison personnel in a coherent approach to management and treatment that is positive, realistic and contemporary.

Since, 1987, evolutionary changes in society, crime policy, sentencing practice and research together with the accession of new member states to the Council of Europe, have significantly altered the context for prison management and the treatment of prisoners. Therefore in view of these changes, European prison rules were again revised in 2006. These revised rules offers guidance to member states that are modernising their prison laws and will assist prison administrators in deciding how to exercise their authority even where the rules have not get been fully implemented in national laws. These rules refer to measures that should be implemented in “national laws” rather than to “national legislation” as they recognise that law making may take different forms in the member states of the council of Europe. According to these rules, the term “national law” is designed to include not only primary legislation passed by a national parliament but also other binding resolutions and orders, as well as law that is made by courts and tribunals in as far as those forms of creating law are recognised by

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national legal systems. Thus, these revised rules provides European Prison Rules provides a more up-to-date vision on penal policy, reflecting the views and practices of the 47 member states of Council of Europe as compared to United Nations the Standard Minimum Rules for the Treatment of Women Prisoners.

These revised European Prison Rules contains the following rules which specifically deals with the problems of women prisoners.

- **Separate Accommodation for Women Prisoners**

  In order to protect the inherent dignity of women prisoners, European prison rules, like standard minimum rules provides women prisoners should be detained separately from male prisoners.\(^{144}\)

- **Sanitary Needs of Women Prisoners**

  Regarding Sanitary needs these rules requires the prison authorities, special arrangements should be made. Ensure that all facilities regarding their sanitary needs, such as adequate water for bathing washing and cleaning, sanitary pad or towels are available and access to them is not denied.\(^{145}\)

- **Special needs of Women Prisoners**

  For access to special services for prisoners, prison authorities should provide special access to services and pay attention to the needs of women prisoners who have suffered physical, mental or sexual abuse before or during imprisonment in addition to the general attention to be paid to all such women prisoners.\(^{146}\)

2.6.3 **American Convention on Human Rights, 1969**

American Convention on Human Rights, the main leg of the American regional human rights, was adopted in 1969 and came into force in 1978. The source of inspiration for the drafter of convention were the non-binding American Declaration on the Rights and Duties of Man, the Universal Declaration of Human rights, the International Covenant on Civil and Political Rights 1996 and the European Convention

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\(^{144}\) Rule 18.8 of *European Prison Rules, 2006.*

\(^{145}\) *Id.*, Rule 34.

\(^{146}\) *Id.*, Rule 34.2.
on Human Rights and Fundamental Freedoms 1953. The Preamble of the Convention states that its purpose is ‘to consolidate in this hemisphere, within the framework of democratic institutions a system of personal liberty and social justice based on respect for the essential rights of men.’

The Convention contains only civil and political rights like European Convention, American Convention also contains ‘derogation clause’ which permits states to take measures derogating from their obligations in time of war, public danger or other emergency that threatens the independence security of a state party to the extent and period of time strictly required by the exigencies of the situation. Two supervisory institutions also established under the charter are:

- American Commission on Human Rights.
- American Court on Human Rights in order to supervise the implementation and enforcement of rights contained in the convention.

The Commission under the Convention has the educational, investigative, advisory, administrative and supervisory roles. These tasks are complementary and mutually supporting, and permit the commission to oversee the totality of human rights activities in the state parties to ACHR. Under the convention, the court has two types of jurisdiction: contentious and advisory. Only the states and American commission of human rights have standing before the court. Individual cases go to the court only through the American Commission. Two types of complaints may be made under the convention. The first is complaint by person denouncing violation of the Convention by a state party. The second is complaint by state parties that another state party has violated the human rights protection by the Convention.


- It prohibits the imposition of the capital punishment on pregnant women.

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148 Art. 27 (1).
149 Id., p.117.
150 Id., p.118.
• It provides that every person condemned to death should have power to apply for amnesty, pardon, or communication of sentence.

• The person deprived of his liberty due to conviction should not be subjected to cruel, inhuman, or degrading punishment or treatment and they should be treated with respect in order to protect both the dignity and the physical and mental integrity of the individual.

• For persons who are convicted the penitentiary systems should have its essential aim the reformation and social rehabilitation/re-adaptation of the prisoner concerned.151

In order to give effect to these provisions adopted the Principles and Best Practices for the Protection of Persons Deprived of their Liberty in America, 2008.

2.6.3.1 Principles and Best Practices for the Protection of Persons Deprived of their Liberty in America, 2008152

Principles and Best Practices on the Protection Persons Deprived of their Liberty were adopted by the Inter-American Commission on Human Rights in its 131st regular period of session held in March 2008. The initiative to frame these principles to protect the rights of persons deprived of their liberty was taken in 2001. The main aim of these principles is to expand on the existing normative framework in order to establish precise standards pertaining to the conditions of detention of persons deprived of their liberty as well as those tortures and other cruel, inhuman and degrading treatment.

In order to fulfill this aim, the Principles support the among other things, the use of independent institutions and organizations to carry out visits and inspections to places where persons are deprived of their liberty. These Principles are not legally binding on states, but creates a moral obligation for the States to be followed in the treatment of the persons deprived of their liberty.153

151 Art. 5(6).
153 Ibid.
The Principles and Best Practices contain the following specific Principles for the gender-specific Treatment of Women Prisoners.

- **Equality and Non-Discrimination**

  Principles and Best Practices prohibit the Discrimination among the different types of prisoners. Women have different health care needs from male. Therefore, action taken solely to protect the rights of pregnant and nursing mothers deprived of their liberty should not be treated as discriminatory. These actions should be applied according to the domestic and international human rights law and must be examined and analyzed before application by judge or other competent independent and impartial authority in the absence of judge.\(^{154}\)

- **Health Rights of Women Prisoners**

  Women deprived of liberty should have access to specialized medical programmes that match their physical and biological characters and assets their reproductive health needs. Pregnant women should have access to gynecological and pediatric care, before, during and after child birth. Child should be born in hospital or other appropriate institution outside the jail. The fact that child is born in hospital should not be mentioned on birth certificate.

  Women’s institution should have special accommodation, adequate personal such as lady doctor, nurse and equipments for pre-natal and post-natal care and treatment.\(^{155}\)

- **Personal Hygiene of Women Prisoners**

  Women deprived of liberty should provide adequate water, toothpaste, soap, toothbrush, sanitary pads or towel on regular basis in order to meet specific sanitary needs of their sex.\(^{156}\)

- **Separation of Different Categories of Prisoners**

  Therefore recognising their vulnerability principles require that and humiliation from the male prisoners and male staff. Therefore, according to principle, women

\(^{154}\) Principle II.
\(^{155}\) Ibid, X.
\(^{156}\) Ibid, XII.
deprived of liberty should be kept in physical separate institutions from the male prisoners institutions so that no business can take place between them.\(^{157}\)

- **Supervision by Female Staff**

  In order to protect the women prisoners form ill-treatment, place of deprivation of liberty of women or the women’s section in mixed institutions should be under the direction of female staff. To protect the privacy of women prisoner, their custody and examination should be carried out fully by the female personals only.\(^{158}\)

- **Body Searches of Women**

  Bodily searches of women prisoners and women visitors for security purposes should be carried out by competent women personals under satisfactory sanitary conditions. Such searches should be compatible with human dignity and respect for fundamental rights.

2.6.4 **African Charter on Human and Peoples Rights, 1981**

The main document of the African Regional Human Rights system is the African Charter on Human and People’s Right, 1981. This Charter was adopted by the Organization of African Unity, which was established in 1963, but in 2000 it was transferred into the African Union. It recognizes not only most of the universally accepted civil and political rights but also certain socio-economic rights. It also recognizes certain collective or group rights along with individual rights. These rights are contained in Chapter I of the Charter. Besides these, rights, Charter also includes duties of the individual towards family etc. Duties of the individual are contained in Chapter II of the Charter. Another important feature of the Charter is that unlike other international human rights conventions, character does not have an express limitation or derogation clause, outlining the conditions under which all the rights in Charter may be limited. Instead the Charter contains certain articles with provisions which are known as ‘clawback’ clauses to which the rights in questions are to be exercised within the law.\(^{159}\)

\(^{157}\) *Ibid*, XIV.

\(^{158}\) *Ibid*, XX.

The task to monitor the compliance with the charter by State parties is entrusted to the African Commission on Human and People’s Right. Under the Charter, the commission takes decision in respect of complaints it receives from individual about violations of the Charter by State parties and receive the reports which the State parties are submit biannually. It also appoints special reporters and adopts resolutions on human rights issues.160

The African Court was not foreseen in the Charter, because it was argued that the traditional way of solving disputes in Africa was not through courts but through mediation and conciliation a task for which a commission was better suited. But the court was established by 1998 protocol came into force in 2004 in order to complement the jurisdiction of the commission. The main aim of the court is to ‘complement the protective mandate’ of the commission. The court has the power to adapt ‘advisory opinions’ namely to give and authoritative statement on an issue relevant to the African Charter or any African Organization recognized by the African Union. It can hear the cases submitted by the Commission. The court also has the power to try to reach an ‘amicable settlement’ between parties to the case.161

The Charter contains the following provisions Relevant to the Present Study:

With regard to the rights of the women’s, the Charter provides that the states should ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women as stipulated in international declaration and Conventions.162

In order to implement this provision with respect to the treatment of the women prisoners, the African System of Human Rights adopted the African Charter on Prisoners rights, 2001.

2.6.4.1 African Charter on Prisoners Rights, 2001163

The African Charter on Prisoner’s Rights “as minimum standard” was adopted by the fifth conference of the central, Eastern and southern African heads of correctional services held on September 2-7, 2001, at Namibia.

160 Ibid.
161 Ibid.
162 Art. 18(3).
The Charter consists of two parts Part A and Part B. Part A contains the general rights of the prisoners whereas the Part B contains rights for the special categories of prisoners such as under-trial prisoners, Female Prisoners, Foreign Prisoners, Juveniles, Mentally Disorder Prisoners, Civil Prisoners, Prisoners Facing Death (sentence) Penalty, Aged or Disabled Prisoners, Prisoners with HIV) Aids, Prisoners Requiring Psychological or Psychiatric Assistance.

The Charter contains the following standards under part B, to be followed by states and prison authorities while dealing with women prisoners in the prisons.

- **Separate Accommodation for Women Prisoners**

  Like European Prison Rules 2006 and Principles and Best Practices for the Protection of Persons Deprived of their Liberty, this Charter also reiterates that in order to protect the women prisoners from physical abuse, they should be confined in the physically separate institutions from the male institutions.

- **Gender-Specific Needs of Women Prisoners**

  Prison authorities should made special arrangements for necessary pre and post-natal care and treatment for the pregnant and mother prisoners in their institution.\(^{164}\)

**Child Care in Prisons**

Prison authorities should made proper arrangements for children to be born in hospital outside the institutions.\(^{165}\) The fact that child is born in prison should not be mentioned on his/her birth certificate.\(^{166}\) So that stigma that women have been in prison are faced with on return to their communities should not be perpetuated through their children.

Mother prisoners should allow to nurture their children up to age of three years. Prison authorities should made efforts to hand over the children after the indicative age (as prescribed by the national laws) to their relatives. If they do not find any relative outside the jail, than social workers should given the responsibility to take proper care of such children.\(^{167}\)

\(^{164}\) *Id*, 2 (b).
\(^{165}\) *Id*, 2 (c).
\(^{166}\) *Id*, 2 (d).
\(^{167}\) *Id*, 2 (e).
- **Equal Access to all Facilities and Services**

  Women prisoners should be allowed to enjoy same rights as enjoyed by male prisoners. They should have equal access to education, vocational training and recreational facilities available to male prisoners.\(^{168}\)

- **Prohibition of Death Penalty on Women Prisoners**

  Death penalty should not be carried out on pregnant and new mother prisoners.\(^{169}\)

- **Protection from Abuse**

  State should take action to prevent the abuse of women prisoners in the hand of the male prisoners and prison officials.\(^{170}\)

- **Psychological or Psychiatric Assistance**

  Women prisoners with children and pregnant mothers require psychological or psychiatric assistance should provide special attention and care of the visiting psychologists and psychiatrists.\(^{171}\)

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\(^{168}\) *Id.*, 2 (b).

\(^{169}\) *Id.*, 2 (1).

\(^{170}\) *Id.*, 2 (b).

\(^{171}\) *Id.*, 2(d).