‘Criminal’ is such a word, which itself creates the hatred for the person who commits the crime. But this hatred becomes more severe, when a woman committed the crime, whether she has committed the crime to protect her family or due to victimization from her family or this society.

Women prisoners are the most unfortunate segment of the society. They have always been treated differently to men and that difference in treatment continues to present day. From the review of the both national and international literature, researcher found that different reasons has been recognized by the different criminologists, and the sociologists for the different and arguably unfavorable treatment towards female prisoners.  

One of the reason is the small number of women prisoners i.e. about 6.5 percent of the world’s prisoners are women and in most prison systems women constitute between 2 and 9 percent of the total prison population. The prevalence of women within the total prison population is lowest in African countries and the highest levels in Asia, especially south-eastern and eastern Asia. In India, women prisoner population comprises 3.9 percent as compared to the male population which is 96.1 percent. Thus, to small number their human rights are largely overlooked. They are often confined in male-centric jails, which mean that prison systems and prison regimes are almost invariably designed for the majority male prison population, for example, from the architecture of prisons, to security procedures, to facilities for health care, family contact, work and training. The Sixth United Nations Congress on Prevention of Crime and Treatment of Offenders 1982 also highlighted this fact that due to small

---

numbers, women prisoners do not get the same attention and consideration as do male prisoners and this inattention often results in limited access for women prisoners to the necessary programs and services.\(^6\)

Secondly, female violence is less culturally acceptable than male violence as it is difficult for society to accept violence from female since it is considered unnatural.\(^7\) Those who are imprisoned are considered to be ‘monsters’, the embodiment of the evil principle and unable to distinguish right from wrong. An unforgiving society rejected and stigmatized women while they were in prison and after they returned to the community. As such, women in prison were not deemed capable of reform and redemption.\(^8\)

Thirdly, academicians and scholars have also considered that female prisoners are not worth focusing on or that they are similar to male prisoners and there is no need to look deeper into their problems. Even Government and the prison authorities unwilling to make different provision for women prisoners have repeatedly invoked the principle that all prisoners should be treated equally and to treat women prisoners differently would be unfair for male prisoners.\(^9\)

Again, the lack of intention on the part of policy makers to give due consideration to female prisoners and their gender-specific histories, life stories and social positioning has also led to the female prison population being a population that is ignored, misunderstood, and neglected.\(^10\)

Moreover, criminologists also neglected the female criminality. They considered female criminality as integral part of the total phenomena of crime. They held that there is no particular reason why female criminality should be viewed exclusively from a


\(^{8}\) Clarice Feiman, \textit{Women in the Criminal Justice System}, Praeger Publications, New York, 2\textsuperscript{nd} ed. 1986, p. 35.


sexual angle.\textsuperscript{11} Even the all traditional criminological theories whether biological, psychological, anomie, control, differential association, conflict, labeling, social disorganization, or social learning theories have been mainly developed from male subjects, validated on male subjects and focus on male victimization.\textsuperscript{12} Feminist criminologist the Carol Smart complains that this lack of knowledge and understanding have led to distorted policies of women treatment.\textsuperscript{13}

In brief it can be stated that the manifestation of these differences often results in stereotypic, inadequate programming which makes incarceration extremely hard for women and leaves them totally unprepared to support themselves or their families upon release.\textsuperscript{14}

In order to ensure that women prisoners are not discriminated against in practice, the feminist criminologists, contemporary scholars, penal reformer and campaign groups advocated that there is need to understand that women prisoners have requirements that are very different to those of men. Women need gender-specific facilities for healthcare, to help them in childbirth, to care for their children in prison, to receive counseling to guard against the possibility of rape and sexual assault and to maintain contact with their dependents. In addition to the physical, they also required mental attention. The female prison population is disproportionately affected by mental health problems, with higher levels of depression, anxiety, phobias, neuroses, self-mutilation and suicide compared to both the general and male prison population. Women prisoners suffer more severe range of social exclusion problems than men on leaving prison.\textsuperscript{15} In other words it can be said that the chance their rehabilitation are quietly bleak. Further many women are forced to bring their young children to prison. The age at which children ought to be educated and socialized is spent by such unfortunate children in jail without any opportunity to learn values and norms of society.\textsuperscript{16}

\begin{thebibliography}{9}
\bibitem[16]{n}Ram Ahuja, \textit{Criminology}, Rawat Publications, New Delhi, 2000, p. 150.
\end{thebibliography}
Women also commit a different variety of offences than men that is to say their pattern of offending differ quite significantly to those men.\footnote{Marget Liddell and Marietta Martinovic, “Women Offending: Trends, Issues and Theoretical Explanations”, \textit{IJSI}, Vol. 6, No.1, 2013, p. 133.} In terms of victimization, some scholars argued that there is complex interrelationship between women’s victimization and women criminality. Women and girls commit crime to avoid being further victimized and they experience victimization in the course of committing crime. The ultimate example of the victimization and criminality nexus is the case of women who kills her abusers.\footnote{Claire Renzetti and Lynne Goodstein, \textit{Women, Crime and Criminal Justice}, Oxford University Press, USA, 2000, pp.4-5.} For example, a women who is criminally assaulted by her brother-in-law, frequently beaten by her husband, denied the legitimate share in her husband’s/ father’s land property by her kin, or forced by circumstances to help her husband in illegal economic pursuits. What happens when such a women endeavors to free herself from the stultifying life her family imposes upon her? More often than not, the freedom and the redressal are sought, may be unintentionally, through behavior which ultimately is labeled as ‘crime’. Thus, a large number of crimes are committed by women due to their victimization in the hands of the society and family members and not due to their criminal tendencies or disorganized personalities. There are two important cases of Phoolen Devi and Kiranjit Ahluwalia. These two cases articulate powerfully the dynamics of women abuse in society and domestic situations and set the stage for an understanding of how victims could become killers.\footnote{Ibid.}

Beside these differences and victimization, the imprisonment of a woman is more dysfunctional to her family in the sense that the family has to face ‘dismemberment’ and ‘demoralization’. The former refers to the crises of absence of a member due to imprisonment and latter refers to social disgrace and social stigma of the family due to its member’s criminality. Both make a women’s family, husband and her children suffer emotional and social deprivation.\footnote{Leelamona Devasia and V.V. Devasia (ed), \textit{Female Criminals and Female Victims: An Indian Perspectives}, DATTSONS Publishers and Publishers Distributors, Nagpur, 1987, p. 56.
Although women remain a small percentage of the total numbers in prison, their number is growing.\textsuperscript{21} The number of women in prison has increased between 2000 and in the beginning of 2013, by over 40 percent.\textsuperscript{22} Research has suggested that the increase in the women prison population is not due to an increasing quantity or severity of crime committed by women, but rather to a change in sentencing policies and law enforcement priorities. The increased imprisonment rates relates most noticeably to drug offences. This may involve women being sentenced for crimes committed as addicts trying to support their addiction, or it may concern women who have attempted to smuggle drugs on behalf of someone else in exchange for payment. At the same time, women in less developed countries continue to be incarcerated for crimes motivated by poverty or crimes relating to sexual conduct and social norms, as well as drug related crimes. This increase not only impacts the individual woman being sentenced to prison but also the overall prison situation of women.\textsuperscript{23}

The need for specific policies which will address the gender specific issues of women prisoners was first highlighted by 19\textsuperscript{th} century reformer, Elizabeth Gurney Fry, she was the first penal reformer to devote her attention solely to the plight of imprisoned women. Her ideals for penal reform were based on the precepts of the Society of Friends. Quakers emphasized personal, paternalistic means of correction and their main instrument of reform was religion.\textsuperscript{24} She rejected the family trappings of material success and adopted the strict principles of the Society of Friends. Her religious and philanthropic work in this group was an important foundation for the penal reforms which led her world wide reclaims. Fry provided the concrete, explicit details for operating penal regimes miring from the works of other penal reformers such as Howard, Buxton, Western, Hoare and other male reformers.

\textquote{In the beginning Elizabeth believed as did most people, that the women were not re-deemable, and she had not planned to help them. But she was horrified at the

---


\textsuperscript{22} Female Imprisonment, International Centre for Prison Studies, retrieved from www.prisonstudies. org/News as visited on 5-3-2014.


conditions in which the women and children lived, their treatment, and the hopelessness of their lives. Although it was considered extremely dangerous, Fry went into the prison to improve conditions for the women as well as for the children. She instituted a committee of women to visit and comfort women prisoner significant change in attitudes towards female offenders among those. Their work demonstrated that even the most degraded women were redeemable. Her success brought about a significant change in attitudes towards female offenders among those interested in penal reform. Her main object was that prisoners should be treated as human beings with human feelings and that their corporation should be sought.”

With the change in attitude, Elizabeth proposed the ‘vigilant and unremitting inspection’. She suggested the creation of prisons for women where the arrangement of cells, day-rooms and airing grounds would allow matrons to be able to see all the prisoners while at work, and in their hours of recreation and to overhear them during the night. She also advocated the continuous useful labour to be an integral feature of prisons because it had moral and material benefits. According to her ‘No prison can be considered complete which does not afford the means of labour, which properly pertains to a reforming discipline and forms an important part of the system of punishment. She continually stressed the importance of useful labour for women prisoners.’

The other instruments of reforms advocated by the Fry’s were religious instruction and teaching in the rudiments of reading and writing. According to her the major thrust of instruction should be religious because she had great faith in the ability of religious instructions to bring about profound ‘amendments in life.’

In order to decrease the deleterious effects of contamination on women prisoners Elizabeth proposed a complex system of classification. According to her classification and segregated living arrangements would distribute women in a hierarchy of relative

---

28 *Id.*, p. 52.
guilt and worth and prompt them to behave in a diligent and industrious manner as a means of achieving greater rewards and privileges.\textsuperscript{29} She also proposed to ban all male from the daily supervision of female inmates, the female prisoners should be placed under the superintendence of officers of their own sex. Matron and female officers should be of a ‘decidedly religious’ character, possessed of ‘respectable, orderly and active habits’ and plain in dress, gentle. They should be a consistent example of feminine propriety and virtue’ and practice vigilance and impartiality in dealing with prisoners.\textsuperscript{30}

Further, the need to address the situation of women prisoners has been emphasized in various contexts such as, The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders 1982, recommended the states to provide recognition to the specific problems of women prisoners and means to solve these problems.\textsuperscript{31}

Moreover, the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment 1988, adopted by the United Nations also clearly recognizes the need for specific measures to be adopted to protect the rights and special status of women, particularly pregnant women and nursing mothers.\textsuperscript{32}

Apart from this, in Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century, (2000), the states committed that they will develop the action-oriented policy recommendations based on special needs of women prisoners.\textsuperscript{33}

Further, The United Nations General Assembly’s, “Plans of Action for the implementation of the Vienna Declaration on Crime and Justice” concerning action on the Special needs of women in the criminal justice system recommended the states to:

\textsuperscript{29} Id, p. 53.
\textsuperscript{30} Id, p. 55.
\textsuperscript{32} Principle 5(2).
Introduction and Research Methodology

- Review, evaluate and, if necessary modify their legislations, policies, procedures and practices relating to criminal matters, in such manner consistent with their legal systems, in order to ensure that women are treated fairly by the criminal justice system and to
- Develop national and international crime prevention and criminal justice strategies that take into account the special needs of women prisoners.

The Human Rights Committee’s General Comment 28 on the equality of rights between men and women emphasized that states must ensure “that the rights of persons deprived of their liberty are protected on equal terms for men and women”.

The Commission on Human Rights in its resolution on “Human Rights in the Administration of Justice in Particular Juvenile Justice”, 2004 highlighted the need for special vigilance with regard to the specific situations of women deprived of their liberty, and their vulnerability to various forms of violence, abuse, injustice and humiliation and therefore invited the governments, relevant international, and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison, in order to find out their key problems and the ways in which they are addressed.

In 2005 six of the seven United Nations Human Rights Treaty bodies raised the issue of the human rights of women in prison.

The establishment of a gender-sensitivity penal system and conducting gender-sensitivity training for law enforcement officials were key recommendations made by a Nigerian NGO in 2006. Studies in Russia and India underlined the requirements for gender sensitivity in the management of women’s prisoners and an “urgent need to re-think women’s prisons without the male prison.”

34 Ibid.
35 Committee on the Elimination of Racial Discrimination, Human Rights Committee, Committee Against Torture, Committee on The Rights of Child.
At the Regional level, the Quaker Council for European Affairs (2007) recommends that the Member States of the Council of Europe to:

- Ensure that prison policies and programmes are specifically tailored to the needs of women, including those in the areas of resettlement; and
- Ensure that the needs of female prisoners upon release, issues such as homelessness, unemployment, workforce discrimination and regaining custody of children, are addressed; if social services were previously involved with a prisoner, then they should be informed when that prisoner is to be released.38

1.1 INITIATIVES TAKEN TO IMPROVE THE CONDITIONS OF WOMEN PRISONERS IN INDIA

The problem of improving the prison administration and conditions of prisoners has been engaging the attention of the Government since independence.39 Various committees, commissions, have been constituted by both the centre and state Government from time to time to improve the prison conditions to the extent as are conducive to the reformation and rehabilitation of prisoners40. The question of ensuring custodial justice to women has also been gone by these committees, starting from the All India jail Manual Committee of 1957-59. This committee suggested a specialized approach towards care, treatment and rehabilitation of women offenders. Another committee, the All India Committee on Jail Reforms, 1980-83 who studied the problem of prison reform in depth, observed about women prisoners that “it is the small number of women in prison, which is responsible for their needs being neglected.” Women continue to be in jails for long periods, sometimes for very minor violations of law, unable to defend themselves, and totally ignorant of ways and means of securing legal aid or help even to write a petition for quick disposal of their cases. They are not aware of the rules of remission or premature release, and live a life of resignation at the mercy of officials who seldom have understanding of their problems. The kind of shy,

inhibited village women that usually land in jails have no courage to communicate their needs to the male staff posted at their jails, and they maintain a ‘Purdah’ as such on their sufferings as on their faces. They have no means of communicating their needs to higher officials as there is hardly any women officer at headquarter of the prison department who would appreciate their needs and requirements and made huge recommendations in respect of treatment of women prisoners. The committee recommended the setting up of ‘Protective Homes’ rather than jails for women prisoners.

On the basis of the reports of these committees and recommendations and custodial torture prevalence against women prisoners, in 1986, an exclusive National Expert Committee on Women Prisoners was set up by the Government of India under the chairmanship of a very eminent retired judge of Supreme Court, Justice Krishna Iyer to undertake a study on the situation of women prisoners’ in penal and correctional system of the India. This committee (i) Studied the procedure for the handling of women offenders in detention or custody (ii) Reviewed the conditions governing treatment of women offender in penal and correctional institutions. (iii) Examined the efficacy of institutional and other services for reformation and rehabilitation of offenders. Committee visited the central jails and a few representative district jails, sub-jails and police-lockups of these states: Bihar, Maharashtra, Orissa, Uttar Pradesh, Assam, Tripura, west Bengal, Andhra Pradesh, Karnataka, Kerala, and Tamil Nadu. During the visits to jails to these states, committee noticed a variety of disabilities women and girls suffer because of their gender in the criminal justice and correctional processes. Justice Krishna Iyer summarizes the whole condition of women prisoners as “women in custody are tragic testimony of judicial futility, statutory impotency and implementation calamity”. Thus, the committee made exhaustive recommendations for bringing about improvements in the management of women prisoners covering various facets. The committee recommended the formulation and adoption of national policy on custodial justice to women. In order to overview the implementation of the proposed policy, the committee recommended the creation of a statutory autonomous body to be designed as the national authority on custodial justice to women. The committee even
formulated a draft “legislative-cum-administrative” code for consideration of the government in this regard. The committee strongly felt the need of adopting two basic approaches while dealing with women prisoners in custody. These approaches are (a) maintaining the dignity of women in the custody, and (b) rehabilitation and social defence should be the principal purpose as well as the outcome of holding women as prisoners and under-trials in the prison. The committee also held that although, an increase in the number of women prisoners in the country had slightly augmented, facilities for women prisoners in forms of accommodation, health, food, medical, education and other basic necessities, the quantum of those facilities is still not adequate in view of increasing number of women prisoners in recent years.41

Again the Parliament Committee on Empowerment of Women, 2001-2002,42 headed by Smt. Marget Alva, took up the subject “Women in Custody” for detailed examination of the conditions of women in detention and therefore visited the jails of the following states: central prison, Mumbai, Tihar jail, Delhi, model jail, Chandigarh, central prison, Orissa, presidency jail, Kolkata, Nari Bandi Niketan and District jail, Lucknow and made some eye opening observations that there is total neglect on the part of the concerned authorities in providing basic needs to women prisoners. There is overcrowding, mal-nutrition, lack of medical care, educational, vocational and legal facilities in almost all the jails. The general condition relating to food, clothing, recreation, hygiene is not proper and needed considerable improvement. The majority of female population in jails consists of under-trials. What is more pathetic is the fact that women inmates who obtained bail were still languishing in jails for want of surety. The committee, therefore strongly recommended that remedial measures must be taken expeditiously by the centre and state government, to bring about discernible improvement in the conditions of women in custody.

135th Report of the Law Commission of India 1989\textsuperscript{43}, In this report the commission discussed the certain questions relating to women in custody, referred to commission by the Ministry of Law and Justice, the Ministry of State crop up out of the report Vol. 1, submitted by the national expert committee on women prisoners, 1986-87, first, relating to Nari Bandigriha Adalat in the nature of mobile judicial camp in order to provide speedy justice to women offenders, second, issue relating to the efficacy and relevance of various legislations having a bearing on women’s status in custody and criminality. In reference to first issue, after analysis of all the practical aspects relating to the establishment of the mobile courts, the law commission held that it is not possible to establish separate courts for under-trial women prisoners instead asked the Government to think more about the importance of the law relating to the grant of bail to women. In reference to the second issue in question, the law commission examined the following legislations: The Code of Criminal Procedure Code, 1973, The Civil Procedure Code, 1908, The Indian Penal Code, 1860, Probation of Offenders Act, 1958. Here only those provisions of these legislations are mentioned which bear relevance for the treatment of women prisoners. About sections 376-B, 376-C, 376-D, of Indian penal code the commission held that these provisions of the Indian Penal Code designed to deter potential offenders from the committing rape or cognate offences including subtler forms of seduction or harassment, are fairly adequate so far as women in custody are concerned. Hence, Commission did not make any recommendation about these sections.

About Section 416, Capital Sentence on a Pregnant Woman which “provides that if a women sentenced to death is found to be pregnant, the high court shall order the execution of the sentence to be postpone and may, if it thinks fit, commute the sentence to imprisonment for life”. Commission held that this section should be substituted as provided “if a women sentenced to death is found to be pregnant, the high court shall commute the sentence to one of imprisonment for life.” \textsuperscript{44}


\textsuperscript{44} Id, p.135.23.
After thorough examination of sections 3 and 4 of the Probation of Offenders Act, 1958 with regard to women prisoners, the commission suggested that the probation of offenders act should be amended in the following manner.

Section 3 of Act, (which deals with the power of the court be release a convicted offender on admonition) should be amended, by providing that in deciding about such release, the court shall have regard to the circumstances of the case, including the nature of the offence and character of the offender (as at present) and the fact that the offender is a women.

Section 4(1) of the Probation of Offenders Act, 1958, which empowers the court to release offender convicted of certain offences on probation of good conduct should be amended on the same lines as section 3 of the act recommended to be amended as above, that is to say, the court shall have regard also to the fact that the offender is a women.45 Besides these amendments the commission was of the opinion that the sentence of imprisonment shall be carried out in the proper spirit. Imprisonment, no doubt, imposes restrictions on the liberty of the person sentenced thereto, but it does not permit cruelty, harassment, exploitation or other maltreatment of a person in prison, nor does it allow an attitude of lethargy or indifferences towards the prisoner.46

Therefore, the following concrete measures were recommended by the law commission as regards female prisoners.

- On admission to jail, a female prisoner should be medically examined. If medically necessary, she should be kept separately in a female enclosure. The same course should be adopted on each occasion of re-admission to jail after temporary release.

- Female prisoner suspected of pregnancy in custody, should be sent to the district government hospital. In case of advanced pregnancy, should be shifted to female ward of the government hospital.

- A female prisoner shall not be handcuffed or made to wear fetter cross-heir during transit from one jail to another or to the court or for investigation.

46 Id. p. 135.17.
Besides this, she should be escorted by the matron or female warden, if she is required to leave the female enclosure. During transit, a female relative shall be allowed to accompany her.

- Where there are no suitable arrangements for housing women prisoners, they should be sent to a suitable institution wherever practicable.

- Jails where there are women prisoners shall be visited by visitors appointed by the Government. Of these jail visitors, one should be a medical officer and two should be social workers (of whom one should be women). Two visitors should visit the jail at least once in six months and make a report to the session judge.

The commission said that if these recommendations are implemented will help to remove the hardship faced by the women prisoners.47

A.P. Bhatnagar Committee on Prison Reform 200648: In 2006 the government of Punjab appointed the A.P Bhatnagar, committee to suggest measures to reform the prisons and correctional services in Punjab.

About the condition of women prisoners in Punjab, committee held that women prisoners in Punjab prisons require special attention. There is a neglect lot and much can be done to organize their daily routine in a much more constructive and useful manner. The most important thing regarding them is how to get them involved in an activity, which will be helpful to them in their rehabilitation. The women prisoners also require attention regarding their health, including mental health care, personal hygiene, segregation, need for welfare for their children and some other peculiar needs.

Committee discussed the measures adopted by the Tihar jail, for the welfare and rehabilitation of women prisoners and Children’s of the women prisoners. Committee had asked the state government to adopt the same measures for women prisoners and their accompanied children in Punjab jails. Beside this, Committee asked the state government to identified and adopt suitable rehabilitation programmes especially suitable for women prisoners, Special arrangements are required to be make for under

47 Id., p. 135.39.
six year old children of women offenders to ensure that children’s growth, development and welfare are taken care of, Lady Doctor should be engaged, to the extent possible, for taking care of healthcare needs of women prisoners, Release on personal bond should be made extensive particularly for women and especially those with accompanying children.\textsuperscript{49}

Beside these committees and commission, in 2002, the Ministry of Women and Children, the Government of India had launched a scheme “SWADHAR- a scheme for women in difficult circumstances” with the objective to provide primary need of shelter, food, clothing, counseling, emotional, legal support and rehabilitation through education, awareness, and skills when women prisoners are released from jail and do not have any family support, among other groups of disadvantaged women.\textsuperscript{50}

In 2002-03 the Central Government launched a non-plan scheme known as the Modernization of Prisons for construction of additional jails to reduce overcrowding, repair and renovation of existing jails, improvement in sanitation and water supply and construction of living accommodation for prisons staff. The scheme was being implemented in 27 States over a period of five years (2002-07) with an outlay of Rs. 1800 crore. The cost was being shared between Central Government and State Governments in the ratio of 75:25 respectively.\textsuperscript{51}

1.2 NATURE OF WOMEN CRIME AND PUNISHMENTS IMPARTED IN INDIA

Understanding the contemporary prison for women requires an examination of the historical background of this system of social control along with the nature of crime committed by the women and respective punishments available for those crimes.\textsuperscript{52} For this purpose, the crime committed by women, its nature, punishment, and existence of

\textsuperscript{49} Ibid.
\textsuperscript{52} Smriti Bhosle, \textit{Female Crime in India and Theoretical Perspective of Crime}, Kalpaz Publications, Delhi, 2009, p. 255.
prison system has been looked upon historically covering: (i) Ancient Period (ii) Medieval Period (iii) British Period of Indian History.

1.2.1 Ancient Period

The laws of the ancient period are believed to be of divine origin, one portion called Sruti, or “that which is heard” and which constitutes the Vedas, the four Vedas are the Rig-Veda, yajurveda, Samaveda, and Atharvaveda, being supposed to be very words revealed by Brahma himself and another dominated Smriti or that which is remembered, comprising the Dharamasatra and imagined to have been communicated to mankind through the medium of inspiration.\textsuperscript{53} The important Smritis are: Manu Smriti, Yajnavalkya Smriti, Narada Smriti, Parahara Smriti, Brihaspati Smriti, Katyayana Smriti.\textsuperscript{54}

Dharamashastra contains three topics. Achara, which provides rules on daily rituals, life-cycle rites, as well as specific duties and proper conduct that each of the four castes or varna have to follow. Vyavahara, they are laws and legal procedures. Prayaschitta, which provides rules for punishment and penances for violating the laws of dharma.\textsuperscript{55}

Among the all Smrities, Manu Smriti is recognized as the most authoritative work by all the law writers, from 2\textsuperscript{nd} century A.D. onwards. The eighteen sub-divisions of law, which cover civil as well as criminal law, are the special features of the Manu Smriti. Kautilya’s Arthasastra was considered to be another important and authoritative source of law during ancient India from Mauryan period onwards. Kautilya’s Arthasastra played a considerably important role in defining crimes by women prescribing controlling measures for such crimes. He talked about women’s crimes, which were mostly ‘transgression, vagrancy, elopement, and sojournments’.\textsuperscript{56}

\textsuperscript{55} Harendra Dayal Thakur, \textit{Ancient Culture of India}, Sundeep Parkashan, Delhi, 1981, p. 2.
In addition to these, literary works of the ancient period, the Mimamsa (art of interpretation) and the Nibadhas (commentaries and digest) are also the supplementary sources of law.\textsuperscript{57}

### 1.2.1.1 Nature of Women Crime and Punishment

According to the above stated sources the penal law of ancient period was not exactly criminal law in the modern sense of the term.\textsuperscript{58} It was based on the Varna System. The administration of legal justice and infliction of punishment was performed on the basis of Varna System.\textsuperscript{59}

Punishment in ancient period actually takes two forms: danda and prayascitta. The First, danda refers to the punishments meted out by legal authorities, usually a ruler, for criminal and civil offences. The second, prayascitta, denotes the self imposed penances or expiation that are generally undertaken voluntarily by a person who has committed a legal or religious transgression.\textsuperscript{60}

The dandaniti, i.e. punishment policy, is one of the elaborately dwelt upon subjects in ancient India as it was intimately connected with the administration of the State. Manu emphasized the importance and utility of punishment saying: “Punishment alone governs all created beings, it protects them and it watches over them while they are asleep.”\textsuperscript{61} As per Manu, Yajnavalkya and Brihaspati there were four kinds or methods of punishment during ancient India, namely, admonition, censure, fine and corporal punishment and declare that these punishments may be inflicted separately or together according to the nature of offence. Corporal punishments included death penalty, cutting off the limb with which the offence was committed, branding on the head some mark indicating the offence committed, shaving the head of the offender and


parading him in public streets.\(^{62}\) Kautilya laid down that the award of punishment should be regulated by a consideration of the motive and nature of the offence, time and place, strength, age, conduct, learning and monetary position of the offender, and by the fact, whether the offence is repeated.\(^{63}\)

In ancient period, the women’s crimes and punishments were defined in terms of morals and virtue. When women commit the crime she was considered not just violators of the criminal code, they are also at the same time violators of particular social mores. The general rule that lesser punishment is to be inflicted on women is stated by Katyayana. Katyayana stated that in cases of all offences women were to suffer half of the fine in money which were prescribed for male offenders, and when capital punishment was inflicted on a male, amputation of a limb would be the corresponding punishment for a female. For murder, however, female criminals were equally severely punished.\(^{64}\) Kautilya provided that: a woman attains ability to enter into transaction on completion of 12 years and men when they are 16: if they disobey after that (i.e. after attaining majority) the women shall be fined twelve panas and a man twice that amount.

\(Kautilya’s\) Arthasastra played a considerable important role in defining crimes by women and prescribing controlling measures for such crimes. He talked about women’s crimes and prescribes the punishments to be inflicted on women. He considers the women offender sympathetically if she is pregnant or who has given birth to infant.\(^{65}\)

Adultery or immoral sexual enjoyment was regarded as the most heinous and degrading offence. The Smritis insisted that sexual enjoyment must be only between duly married husband and wife.\(^{66}\) Adulterous females were also not exempt from punishment.


\(^{63}\) Ibid.

\(^{64}\) Sukla Das, Crime and Punishment in Ancient India, Abhinav Publications, New Delhi, 1977, p. 69.


Following types of punishment was available for women who commit the adultery. *Yajnavalkya* prescribe the highest amercement, the middling one when the paramour was of higher caste, but he was of a lower caste than the women, the male offender was sentenced to death and the woman had her ears cut off.\(^67\) If the male be of lower caste than the women, the male offender was sentenced to death and the women had her ears cut off. The consenting women (adulteress) was, according to *Vasistha* to be shaved, to have her head anointed with clarified butter and to be paraded naked on an ass and left to die on the great journey, while, the *Manu* provides when a women, arrogant because of the eminence of her relatives and her own feminine qualities, becomes unfaithful to her husband, the king should have her devoured by dogs in a public square frequented by many.\(^68\) *Kautilya* prescribe the cutting of nose and ear of a wife indulging in adultery and in some cases recommended 27 *panas* for the women.\(^69\) *Gautama* states that the king should get an adulteress devoured by dogs in a public place, if the adulteress is of a caste lower than her.\(^70\) *Sankha* prescribes this punishment for a women’s paramour of a lower caste and for erring women death by burning. *Vrddha-harita* prescribes that in the case of a women who is confirmed adulteress, or who destroys her foetus, her husband should have her ears, nose and lips cut off and then she should be banished. *Brhaspati* was much staucher in this respect and according to him female adulterers were to be punished more severely. But these severe punishments for adultery were very much relaxed and softened by later *Smriti* writers.\(^71\)

Causing abortion was regarded as a serious offence and was severely punished. *Narada* has prescribed banishment for women who procure abortion. Bigamy was no offence in the case of males. In case of females bigamy was prohibited, but no judicial

---


\(^{69}\) Birendra Nath, *Judicial Administration in Ancient India*, Janaki Prakashan, Patna, 1979, p.82.


punishment appears to have been prescribed for the offence of bigamy as such. Such cases were left in the hand of village elders for meting out social punishments.\textsuperscript{72}

Manu prescribes the shaving of the head as a punishment for a woman who pollutes a maiden. Flogging was prescribed by Vishnu for a woman in her course touching intentionally members of the higher castes.\textsuperscript{73} A wife, who has committed faults, may be beaten with rope or a split bomboo on the back part of the body only not on a noble part. According to Kautilya, suicide is severe crime, the person whether man or women would be punished by the punishment of deprival of rites after death who commits suicide.\textsuperscript{74}

Vasistha enjoins that only four types of wives are to be abandoned, one who has intercourse with the husband Pupil, with the husband’s guru, one who attempts to kill her husband. Second, who commits adultery with a man of degrade caste like a leather-work.\textsuperscript{75} Lesbians were cruelly punished by having their fingers chopped off.\textsuperscript{76}

Besides these, punishments, death penalty was also inflicted on women offenders in the following cases. Women who was extremely wicked or who murdered a man or who destroyed the embankments of a tank may have a stone tied round her neck and be drowned, provided she be not pregnant at the time of the sentence.\textsuperscript{77} Yajnavalkya prescribes death by being gored by the horns of bulls (after the nose, lips, ears and hands are cut off) for a woman who is guilty of poisoning or who is guilty of incendiarism or who kills her husband, elders or her own child. Manu prescribed that a women, being boastful of her father’s richness or of her own beauty, deserting her

\textsuperscript{72} Suvar na Cherukuri, \textit{Women in Prison: An Insight into Capacity and Crime}, Foundation Books, New Delhi, 2008, p.43


\textsuperscript{74} Shailja Bapat, “Kautilya’s Views on Punishment in Dharamasastra and Social Awareness, by V.N. Jha (ed.), Indian Books Centre, Delhi, 1996, p. 172.


husband and living in adultery with her paramour both the women and her paramour are punishable with death.  

1.2.1.2 Imprisonment

Imprisonment was also prevalent during the ancient period. Manu mentions imprisonment among the three main modes of punishment. He laid down, “Let the king carefully restrain the wicked by three methods: by imprisonment, by putting them in fetters in lock-ups.” About the construction of the prisons, Manu prescribed that, prison-houses should be built on public roads so that everybody can see the sufferings and disfigured criminals.

During Buddha Period, prisons were also in existence. There were regular prisons called Bandhanagaras, where the convicted prisoners were jailed and were often kept in fetters and chains, and from where they sometimes ran away.

Although kautilya did not mention the imprisonment as punishment but text refers to prison-houses and their administration. About prisons, there were two types of prison-houses-dharmasthiyabandhandgara and Mahamatriyabandhanagara. The former known as charaka, something like a lock-up where the accused was kept till the case was decided. The later appears to be intended for criminals who were unable to pay fines imposed on them. The period of imprisonment was determined by the amount of fine to be paid out of the wages earned for the work done for the state or till a relative of the prisoner freed him by paying the requisite amount of ransom.

Kauthila’s Arthasastra elaborate some of the consideration for prisoners, which could be treated as some physical facilities to be provided to them that the accused who are not convicted and whose trial is going on in a different lock-up where the other prisoners are lodged. Those who are convicted by judges and unable to pay their fines

78 Id., p. 191.
79 Divakar Mohanty, Rights of Prisoners, in Dharamasatra and Human Rights, by Ujjwala Jha (ed.), New Bhartiya Book Corporation, Delhi, 2011, p. 73.
were lodged in separate well guarded rooms. Facilities like halls, wells, bathrooms, place of worship according to their respective religion were constructed within prison. Sanitary arrangements, arrangement of protection against fire, against poisonous and other dangerous creatures were made. If somebody troubles and harasses a prisoner like disturbances in his sleep, in his taking meals, answering natures call and moving he shall be fined three Panas each. This will increase by three Panas for each type of harassment. If the superintendent subjects any prisoners to unjust torture without proper cause, the superintendent has to pay 48 Panas. If a superintendent deprives a prisoner of food and water he has to pay fine of 96 Panas. When officer torments a prisoner he shall be punished in a second degree of fine and he causes death to a prisoner he should be fined 100 Panas. Due to prescription of fine in cash and kind the interest of the prisoners were protected where indirectly light on their rights.\textsuperscript{84}

In respect of protection of women prisoners, Kautilya provides that separate wards are made for male and female prisoners. In order to protect from custodial violence Kautilya provides that if an officer in a jail rapes a captive or a slave within lock-up he shall be punished with first degree of fine. When he commits rape with an Arya woman in lock-up he shall be punished with the highest degree of fine. When an officer commits rape with an Arya woman arrested for untimely moment at night he shall be hanged at the same spot.\textsuperscript{85}

Kautilya also refers to grant of pardon to the prisoners on special occasions. Whenever new country is conquered, when an heir-apparent is installed on the throne, or when a prince is born to the king, prisoners are usually set free. Once in a day or once in five nights, jails may be emptied of prisoners in consideration of the work they have done, or of whipping inflicted upon them or of an adequate ransom paid by them in gold.\textsuperscript{86} He also prescribed that on the day to which birth stars of the king are assigned, as well as on full moon days. He prescribed that among the duties of the Nagaraka is to let out of the jail on the day of the festival of the birth constellation of

\textsuperscript{84} Divakar Mohanty, “Rights of Prisoners”, in Dharmasastra and Human Rights, by Ujjwala Jha (ed.) New Bhartiya Book Corporation, Delhi, 2011, p. 72.

\textsuperscript{85} Ibid.

the king and on the full moon day such prisoners as are young, very old, suffering from
disease, and helpless or those who are of charitable disposed may pay in cash the fines
or others bind themselves by an agreement to pay in cash the fines for the offences for
which the prisoners are jailed.\(^8^7\) The condition of the prisons were undoubtedly
improved in the time of Asoka, who appears to be first to exert for the temporal and
spiritual welfare of the prisoners, and entrusted this work on the offices called
_Dharmamahamatras_. Asoka’s measures were stepping towards moulding prisons as the
place of reformatory punishment.\(^8^8\)

### 1.3 MUGHAL PERIOD

Muslims were a foreign Muhammadan dynasty who settled in India in eight
centuries after Islam has been adopted in certain countries outside India and a new
administrative type has been developed in those countries. The Mughal administration
presented a combination of India and extra-Indian element, or more correctly, it was the
Perso-Arabic system in Indian setting. This imported system was modified to suit local
needs. Its attitude towards law and justice was opposed to modern conceptions.\(^8^9\)

#### 1.3.1 Nature of Women Crime and Punishment

Muslim criminal law broadly classified the crimes under three heads: (i) Crimes
against God (ii) Crimes against Sovereign (iii) Crimes against Individuals.\(^9^0\) According
to J.N. Sarkar, the punishment for these crimes was of four types which include _Hadd_,
(b) _Tazir_, (c) _Qisas_ and (d) _Tashhir_. To these he added detention in prison without trial,
somewhat like our Hajat (lock-up) but more severe.

#### 1.3.1.1 _Hadd_

_Hadd_ signified boundary on limit; barrier or obstruction. In the _Qurans_, it is
always found in plural, meaning the limit lay down by God, i.e. the provisions of law.
_Hadd_ is that punishment which has been exactly defined in the _Quran_ or the _Hadis_ by

---


90 _Id_, p. 101.
This form of punishment is distinguished from *Qisas*, which was considered the right of man, or private, as well as from *Tazir*, which was indefinite and left to the discretion of the *Qazi*. Under *Hadd* the quantity and quality of punishment was fixed for certain offences and this could not be altered or modified. If the offence was proved the qazi had no other alternative but to sentence the convict to the prescribed punishment. The main aim of this punishment was to deter offenders from the perpetration of criminal acts, injurious to the community.92

The punishment of *Hadd* extended to crimes of adultery of illicit sexual intercourse (*Zina*) between married or unmarried persons, of false accusations of incontinence (*Qadh*) of drinking wine, of theft and of highway robbery.93

- **Zina** The penalties for a man and woman, for the offence of *Zina*, when legally established in like circumstances, were the same. But whereas a man to be punished standing and naked except his girdle, a woman was not to be stripped, except of her outward garments, to receive the strips inflicted upon her, and with a further regard to decency, she was to receive them in sitting posture. The execution of a sentence of whipping, but not for lapidation, were to be postponed, in the case of a pregnant woman, until she had recovered from her labour.94

- **Drinking of wine (*Shurb*)** Under Muslim penal law, the punishment for drinking wine, or being intoxicated with ether prohibited liquors was, if the offender was a free man or woman, eighty strips, to be inflicted in the same manner as provided in the case of zina and forty strips if the drinker was a slave, whether male or female.95

---

94 *Id.* p. 48.
95 *Id.* p. 49.
A false imputation of incontinence **Qadhf (Slander)** The penalty for slander when legally established was eighty strips, if the offender was free and forty strips if he or she was a slave.\(^{96}\)

**Conversion/Apostate** A woman apostate is to be imprisoned according to the Hanafi School, but must be put to death according to all the other three schools of law.\(^{97}\)

### 1.3.1.2 Qisas

**Qisas** means retaliation, applied in case of killing and wounding which do not prove fatal. This was the personal right of the victim or his next kin, in the case of certain crimes, notably murder, unless the person killed was himself under sentence of law to die. If he demanded the legal punishment, the *Qazi* was bound to inflict it and neither he nor the king could exercise the royal clemency by modification or abrogation of the sentence. However, it became a case of *Diya* if the next to kin of the deceased was satisfied with the money damages as price of blood, offered by the murderer, or pardoned him unconditionally, it was his lookout, and neither the *Qazi* nor the king was to take any further notice of the crime. In **Qisas** “the right of god’s creatures prevailed” and the state came in only if desired to do so by a complaint of the aggrieved party.\(^{98}\) In case of murder of woman by woman she was to be tarnish.\(^{99}\) The *Diya* for a crime committed against a woman was half of that given for a man. There was no *diya* for a minor or an insane person. Women and children were not liable to pay *Diya*.\(^{100}\)

### 1.3.1.3 Tazir

**Tazir** means discretionary punishment, is intended to reform the criminal and inflicted for such crimes as have no *hadd* punishment. It was not ‘the right of god’. On contrary, its severity and magnitude was left entirely to the discretion of the judges for which attempts were often made to escape this type of punishment by bribery. It could take one of these four forms:

---

\(^{96}\) *Id*. p. 50.


\(^{100}\) *Id*. p. 29.
• Tadib, or public reprimand.
• Tirr, or dragging the offender to the door and exposing him to public scorn; somewhat like putting a man in the pillary.
• Imprisonment or exile
• Boxing on the ear; scourging.\textsuperscript{101}

1.3.1.4 \textit{Tash-hir}

\textit{Tash-hir} or public degradation was a properly- devised punishment of universal currency throughout the Muslim world and even Hindu India and medieval Europe. It included such punishment such punishments as shaving off the offender’s head, making him ride on an ass with his face turned towards its tail, and his body covered with dust, sometimes with a garland of old shoes placed around his neck; parading him in this posture through the streets with noisy music and finally turning him out of the city. It is neither recognized nor condemned in the law-books of Islam, but has been inflicted by all Muslim \textit{Qazis} and kings, and even by the lay public.\textsuperscript{102} This punishment is mentioned in the Institutes of \textit{Manu}. The guilty (women) was mounted on an ass and paraded through the public streets. Prince Shah Alam inflicted this punishment on a woman in \textit{Ujjan} for giving false information about a hidden treasure. He ordered to tear her robe to pieces, mount her on an ass with her face to its tail and parade her through the city. She was then flogged and afterwards released.\textsuperscript{103}

1.3.2 \textbf{Imprisonment}

During the Muslim rule in India punishment by imprisonment was not as uncommon as in ancient Hin India. But the chief feature of this punishment was that no period was fixed for it. The \textit{qazi} and the magistrate had a right to send anyone to prison for the offence or crime for which the punishment could be warded and the accused had to show signs of repentance to secure his freedom.\textsuperscript{104} There were two kinds of prisons,

\begin{flushleft}
\textsuperscript{102} Ibid.
\end{flushleft}
one for prisoners of high rank and the other for ordinary criminals. Important nobles and princes guilty of treason and rebellions were imprisoned in the fortresses situated in different parts of the country the prominent among them, one was at Gwalior, second at Ranthambar and the third at Rohtas.105 Criminals condemned to death were usually sent to the fort of Ranthambore. They met their death two months after their arrival there. The Gwalior fort was reserved for the ‘nobles that offend’. To Rohtas were sent those nobles who were condemned to perpetual imprisonment, from whence very few return home’. Princes of royal blood were often sent to this place. Beside these noble-castles, there were jails at the capital, at the headquarters, of provinces, districts and parganahs. These public jails were called bandikhanas. Beside regular prisoners, under trials were confined in jails. Occasionally, the prisoners were transferred from one place to another. When prisoners were taken to the prison, they were usually loaded with iron fetters on their feet and shackles on their necks.106

The jails were frequently inspected by high officials of the judicial department who inquired those who had suffered enough. Sometimes the emperor paid visits to the prison houses at the capital, while the governors inspected the provisional jails. Internal organization of jails was highly unsatisfactory. Little or no care was taken of hygiene and cleanliness in jails nor was there any satisfactory arrangement for messing and treatment. Expense on jails was perhaps resented by all long periods. They therefore did not favour imprisonment for long periods.107

In the time of Aurangzeb, persons were detained for securing confession. The detention in jail lasted as long as the accused did not become weak or submissive. He was let off earlier if he agreed to embrace Islam. Many persons were able to secure the release they were re-arrested. Slow poisoning of the prisoners was also resorted to be giving them big doses of opium early in the morning. Such a practice existed in the fort of Gwalior also.108

107 Ibid.
The only redeeming feature for the prisoners was that orders for their release were issued on special occasions. On the birth of prince Salim, Akbar ordered that all the prisoners in the imperial dominions were to be released. Soon after his occasion, Jahangir ordered the release of all those persons who had been imprisoned for a long time in the forts.\(^{109}\)

1.4 **BRITISH PERIOD**

After the British East India Company in 1765, had acquired the authority over the department of finances of Bengal it gradually extended its control over other branches of government. The legal system was essentially Islamic and as far as penal law was concerned, based on *Hanafite* law. Under the Muslim law, as compared to contemporary British law, there were relatively few capital offences and, in addition, there were so many defences available that convictions for such capital offences were difficult to obtain. Britishers were not in favour to use the discretionary power of *siyasa* for pronouncing death sentences. They regarded it as arbitrary justice which offended their idea of rule of law. Therefore, in the beginning they adopted status quo. But gradually, the Britishers modified the Islamic criminal law properly rather than circumventing it by using the extensive discretionary power of *siyasa*.\(^{110}\)

1.4.1 **Nature of Women Crime and Punishment**

At the beginning of the British rule, the following punishments were imposed on criminals such as impaling, cutting off the nose and ears, the stocks, blowing from a gun, hanging, drowning either from a boat or being tied up in a beg, flogging with a whip, and jail. Imprisonment in jails and transportation to some country were two methods of punishment which were made much use in British period.\(^{111}\)

The system of transportation was started in India in 1784 in a planned manner. The first penal settlement in India was at Bencoolen in Sumatra in 1787 and the first batch of Indian convicts was transported to this place in 1787. In 1823, the penal settlement was transferred to Island of Penang. After Penang, when Singapore came


into possession of Great Britain, a group of convicts were transported from India to Bancoolen and from there to Singapore on 18th April, 1925. Among them was one female, transported for life. After these penal settlements, penal settlement at Andaman’s began from March, 1858. In 1859, all felons under sentence of transportation, who were physically fit for labour were departed at once to the Andamans. In 1860, Government started sending female convicts to Andamans.\footnote{Id.}

1.4.2 Imprisonment

As the condition of jails was appalling at the end of the Muslims rule, but the government of Bengal did not pay any attention to this problem before the arrival of Lord Cornwallis. Until then prisoners were under the general management of the Naib Nazim and his subordinates, the judges of the Foujdari courts upto 1970, the government of the company exerted only indirect influence on the Nizamat and so not much was done in the field of jail administration till them. But in 1790, with the assumption of direct responsibility for the Nizamat and the administration of criminal justice, the improvement of prison conditions began to receive attention. At that time the buildings constituting the jails were in very poor conditions. Almost all the jails had mud-walls and straw thatched roofs. The condition of prisoners was very deplorable. Ill-treatment of prisoners and severities were practiced on them. Jails were miserably overcrowded and the prisoners were deprived of the necessities of life because of the inefficiency of administration. There were no classification of prisoners, criminals and debtors, men and women, were kept together in the same room.\footnote{Tapas Kumar Banerjee, Background to Indian Criminal Law, Orient Longmans, New Delhi, 1963, p. 361.}

The number of deaths among the prisoners was unusually high. Due to insecurity of the jails prisoners often escaped from the jails. Prisoners were kept in stocks or fetters or fasten them down with bamboos, or shut them up in cells or close apartments at night not on account of the suit or charge on which they are confined, but because of insecurity of the jails. Untried prisoners were also put into fetters. Prisoners were not given food by the government, but they were given daily allowance with which they purchase their food from one or more shopkeepers who were allowed access.
to the prisoners. At some places the prisoners were not given their rations and were forbidden to wash and shave. Some jails were miserably overcrowded and the prisoners were deprived of the necessities because of the inefficiency in administration. From the stand point of health, security and durability in the face of storms or fire, jails were unsatisfactory. Solitary confinement was more prevalent. Prison labour was intended to inflict punishment on the prisoner, to disagree and humiliate him, and finally to crush him. Prison labour was usually taken as the means to keep the men usefully employed, to make them contribute to some extent to the cost of their maintenance and to prevent their mental deterioration. All convicts sentenced to imprisonment were employed on public works like the manufacture of bricks, digging of tanks, repairing of the bands, clearing of jungles, and in the construction of bridges and of roads throughout the province which were scandalously defective, with the exceptions of bodily labour because of age sickness, or other infirmity.\textsuperscript{114}

First effort to reform the prison administration was made in 1835, when Macaulay drew the attention of Government to the necessity of thorough prison reform and proposed to appoint a committee “for the purpose of collecting information as to the state of Indian prison and of preparing an improved plan of prison discipline and to suggest such reforms as may make the place a model for other prisons”. Therefore, a committee was formed with able men of whom Macaulay was one to report on the subject. The report was prepared after the most careful and prolonged inquiry in all parts of India and submitted its report in 1838\textsuperscript{115} criticizing severely the “laxity of discipline, corruption and the system of employing the prisoners in extra-mural labour on public roads. Unfortunately, the committee in its recommendations deliberately rejected “all reforming influences such as moral and religious teaching, education or any system of rewards for good conduct.” However, one of the factors which goes in favour of this committee is, that the process of prison reforms started in India with the recommendations of this committee. For many years, after the establishment of this committee, no marked progress was done in the field of prison reforms and concept of human treatment of prisoners.\textsuperscript{116}

\begin{footnotes}
\item[114] Ibid.
\item[115] Id, p. 362.
\item[116] Naresh Kumar, Constitutional Rights of Prisoners: A Study of Judicial Trends, Mittal Publications, Delhi, 1986, pp. 5-6.
\end{footnotes}
Therefore, Second Prison Inquiry Committee was appointed in 1864 to review the prison administration in India. In 1877 a Conference of experts met to inquiry into prison administration. The conference proposed the enactment of a prison law and draft bill was prepared. But no attempt made at legislating the proposed draft bill. In 1888-89 another committee was appointed to examine jail administration and on the basis of its report, \textit{the Prison Act 1894 and the Prisoners Act 1900} and other statutes dealing with prisoners was passed.\footnote{M.C. Valson, Rights of Prisoners: An Evolving Jurisprudence, \textit{CULR}, Marc-Dec 1995, p. 308.} However, the process of review of the prison problems in India continued even after this. Another Indian Jail Committee was appointed in 1919-20. This committee examined the conditions of prisons not only in India but also in England, Scotland, U.S.A., Japan, Philippines and Hongkong and after visiting the jails of these countries, Committee stated that:

“The Indian prison administration has lagged behind on the reformatory side of prison work. It has failed so far to regard the prisoners as an individual and has conceived of him rather as a unit in the jail administrative machinery. It has little lost sight of the effect which humanizing and civilizing influences might have on the mind of the individual prisoner.”\footnote{R.N. Sharma, Prison Reforms in Modern Perspective-A Comparative Analysis”, M.D.U. Law Journal, 2002, p. 47.} The committee emphasized “the necessity of improving increasing existing jail accommodations, of recruiting a better class of warders, of providing education for prisoners, and of developing prison industries so as to meet the needs of the consuming department of Government”. It also recommended the separation of civil from criminal offenders and the creation of children’s courts, and drew particular attention to the reformation side of the system.\footnote{R.C. Majumdhar, \textit{An Advanced History of India}, Macmillan St. Martin Press, 1970, p. 932.} But the recommendations of this committee could not be implemented due to the unfavorable political atmosphere that prevailed during that time.\footnote{Manoj Kumar Sinha, “Formulating a Pragmatic Prison Policy for India”, \textit{CILQ}, 2001, p. 295.}

Under the \textit{Government of India Act, 1919}, the maintenance of prisons fell within the sphere of provincial government, subject, however, to all-India legislation. With the introduction of provincial subject and the power of legislation in this respect was vested
in the provincial governments as regards the transfer of prisoners and criminals from one unit to another.\textsuperscript{121}

1.5 CRIMINAL JUSTICE SYSTEM IN INDIA

‘Criminal Justice System’ refers to the structure, functions, and decision and processes of agencies that deal with the crime prevention, investigation, prosecution, punishment and correction. Some believe that it is not totally accurate to speak of a criminal justice system. A System implies some unity of purpose, an organized interrelationship among component parts. The criminal justice system is a loose confederation of agencies that perform different functions and are independently funded, managed and operated. However, despite their independence, these agencies of criminal justice system are interrelated because what one agency does affects all others. That is why they are called a ‘System’.\textsuperscript{122}

The objective of the criminal justice are prevention, and control of crime, maintenance of public order and peace, protection of the rights of the victim as well as person in conflict with law, punishment and rehabilitation of those adjudged guilty of committing crime, and generally protection of life and property against crime and criminality. The principal formal agencies of criminal justice are Police, Judiciary, and the Correction (Prisons, Probation and Parole) under the Constitution of India.\textsuperscript{123}

Thus, prison or correction is the final stage in the criminal justice system. It is custodian of the criminal justice administration. Prisons give legal effect to the labours of the investigative, prosecution and adjudicatory functions performed by the police, prosecution and the courts respectively.\textsuperscript{124}

1.6 CONTROL AND MANAGEMENT OF PRISONS IN INDIA

‘Prison’ in India is a State subject according to item 4 in the State List-II of the seventh schedule of the constitution. Prison are managed and governed by state Government and Government of Union Territories. The Government of the states and

\textsuperscript{124} Prisons and law in India prepared by Bureau of Police Research and Development, Ministry of Home Affairs, New Delhi, 2003.
union territories have last world in all matters relating to prevention and detention of crime, trial and sentencing of offenders, and the custody of criminals in prisons. The State Government has the power to make rules and regulations for administration and management of prisons and correctional institutions.

In India there are a total of 1,394 prisons of different categories and sizes, with an authorized capacity of 3,43,169 but they lodge 3, 85,135 inmates including 3, 68,184 male (95.6%), and 6,951 (4.4%) female inmates. Out of these number, 1, 27,789 were convicts, 2, 54,857 were under trials, and the balance 4922 being detenues and 567 others. The occupancy rate was 112.2 percent at the end of the 2012. As far as the male-female convict’s ratio is concerned, 96.1 percent were males and 3.9 percent were females. There are 20 jails exclusively for women prisoners exist only in 13 states/UTs. The highest numbers of female inmates 3,163 were reported from Uttar Pradesh followed by Madhya Pradesh 1,181, Bihar 928, Maharashtra 1,338, Punjab 1,275 female at the end of year 2012. Maximum numbers of women convict were reported (844) from Uttar Pradesh followed by Madhya Pradesh (494) of the total convicts in the country at the end of the year 2012.\(^\text{125}\) In Punjab out of total 1,275 female inmates 407 were female convicts and 865 were female under trials at the end of 2012\(^\text{126}\).

### Table 1.1
**Number of Women Convicts in Central Jails of Punjab**

<table>
<thead>
<tr>
<th>Year</th>
<th>Convicts</th>
<th>Under-trials</th>
<th>Total C.T+U.T</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>105</td>
<td>319</td>
<td>424</td>
</tr>
<tr>
<td>2006</td>
<td>120</td>
<td>342</td>
<td>462</td>
</tr>
<tr>
<td>2007</td>
<td>114</td>
<td>398</td>
<td>512</td>
</tr>
<tr>
<td>2008</td>
<td>152</td>
<td>316</td>
<td>468</td>
</tr>
<tr>
<td>2009</td>
<td>216</td>
<td>345</td>
<td>561</td>
</tr>
<tr>
<td>2010</td>
<td>215</td>
<td>448</td>
<td>663</td>
</tr>
<tr>
<td>2011</td>
<td>247</td>
<td>369</td>
<td>616</td>
</tr>
</tbody>
</table>


\(^{125}\) Tamil Nadu and Kerala has 3 women jails each and Andhra Pradesh, Rajasthan and West Bengal have 2 women jails each. Bihar, Gujarat, Maharashtra, Odisha, Punjab, Tripura, Uttar Pradesh, and Delhi have one women jail each. Total capacity of women inmates was highest in Tamil Nadu, (1,569) followed by Rajasthan (469), Uttar Pradesh (420), West Bengal & Delhi (400 each), Andhra Pradesh (380), Punjab (320), Maharashtra (262), Kerala (232), Gujarat (200), Bihar (83), Odisha (52) and Tripura (30). Prison Statistics 2012, available at from ncrb.nic.in. as visited on 1-3-2014.

The Central Acts which govern the working of Prisons in India are:

- *The Prison Act, 1894*
- *The Prisoner Act, 1900*
- *The Transfer of Prisoners Act, 1950*

These Central Acts provide overall uniformity in the functioning of prisons in different states. Besides these acts, the state governments have passed their own laws. All states have their own Jails Manuals based on the central acts as amended by the state Government from time to time to meet local needs and requirements.

The general, matters concerning prisons and adult offenders are looked after by the Home Department of the State Government. Other subjects like the prevention and control of Juvenile delinquency and after care under the Social welfare department.

The State Act which governs the working of prisons in Punjab are:

- *Punjab Prisoners (Attendance in Courts) Rules, 1969*
- *Punjab Habitual offenders (Control and Reform) Act, 1952.*
- *Punjab Habitual Offenders (Control and Reform), Rules, 1957.*

*The Prison Act, 1894* has defined the term “prison” as any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners and include all lands and buildings apartment thereto, but does not include:

(a) any place for the confinement of prisoners who are exclusively in the custody of the police.

(b) any place specially appointed by the State Government under section 541 of the Code of Criminal Procedure Code, 1882; or
any place which has been declared by the State Government, by general or special order, to be a subsidiary jail:127

Organizational Set Up128

![Organizational Set Up Diagram]

127 Sec 3(1) of the Prison Act, 1894.
128 Comptroller and Auditor General of India, retrieved from agpunjab.gov.in/reports/2012/report%20no%203/appendices.pdf as visited on 12-10-2013.
possible efforts have to be made to ensure that they came out of prisons as a better individual.\textsuperscript{129}

The Jail Department of Punjab\textsuperscript{130} also seeks to protect society from criminals and also endeavor to reform and assimilate offenders in the social milieu by giving them appropriate correctional treatment. To make correctional treatment a continuous and complete process, this integrated department is called the Department of Prisons and Correctional Services. This department is a part of the Ministry of Home Affairs and Justice of Punjab Government.\textsuperscript{131} All prisons in Punjab have been named as \textit{Sudhar Ghars} to create a healthy psychological effect in the minds of the inmates, prison staff and general public.\textsuperscript{132} In Punjab there are seven Central Jails,\textsuperscript{133} six District Jails,\textsuperscript{134} ten Sub Jails,\textsuperscript{135} only one Women Jail situated at Ludhiana, one Borstal Jail, and two open Agricultural jails.\textsuperscript{136}

1.8 REVIEW OF LITERATURE

\textbf{Sudha Kaldate}\textsuperscript{137} (1987), in this paper, authoress, has made an effort to discuss the problems of the convicted women offenders. She has used both the empirical and the non-empirical method. She visited the jails and correctional institutions of women offenders situated in states of Assam, Tripura and West Bengal. During the visit to these jails and correctional institutions, she found that female offenders are considered as a ‘limited risk custodial liability’ and their small number in prisons are responsible for their needs being neglected. According to her, physical state of most prison buildings was unsatisfactory. Custodial amenities for women prisoners were unsatisfactory.

\textsuperscript{132} Ibid.
\textsuperscript{133} (1) Amritsar (2) Bathinda (3) Ferozepur (4) Gurdaspur (5) Jalandhar (6) Ludhiana (7) Patiala.
\textsuperscript{134} One each at (1) Faridkot (2) Hoshiarpur (3) Kapurthala (4) Nabha (5) Ropar (6) Sangrur.
\textsuperscript{135} One act at (i) Barnala (2) Dasuya (3) Fazilka (4) Malerkotla (5) Moga (6) Mansa (7) Muktsar (8) Pathankot (Now district jail) (9) Patti and (10) Phagwara.
\textsuperscript{136} One at Nabha and other at Kapurthala (Now District Jail).
classification of prisoners was also non-existent in most prisons. Medical diagnostic and care facility by full-time female doctors was absent in many jails.

Beside physical infrastructure, she also found the lack of co-ordination between correctional services and other agencies like law, probation and voluntary organizations and women staff inadequate and under represented at all levels. Through the review of published and unpublished literature she found that recommendation of the Indians Jails Reform Committee, 1919-20 have received little attention in various states and union territories.

In order to improve the conditions of women offenders in India she suggested apart from improvement in daily facilities, cleanliness and hygiene conditions, educational, vocational and legal literacy programme should be introduced and carried on with all seriousness. Voluntary bodies, women activities and lady advocates should be associated by the prison officials. Reports of the committees constituted to consider the conditions of women prisoners should be urgently implemented so that a women convict should come out of prison as a responsible citizen. Those who want to improve the conditions of women offenders should study and where possible personally inspect, prison conditions in India as well as outside.

Samarendra Mohanty\(^{138}\) (1987), in this paper, the author had made an attempt to describe certain critical issues concerning the female prisoners in India and the relevance of vocational training for their reformation and rehabilitation. In order to achieve these objectives, he used the non-doctrinal method. About female criminality, he studied the prison statistics from 1971 to 1978 and found that number of female criminals has increased from 41.87 percent to 55.90 percent and that women do commit all kinds of crimes that their male counterpart do. About vocational training, he held that available vocational training programme for prisoners in jails are inadequate and may not help in their rehabilitation and suggested to introduce vocational training programme for women prisoners in jails those can have a tremendous help in developing a sense of responsibility which is must for rehabilitation in the truest sense.

\(^{138}\) Leelamona Devasia and V.V. Devasia, *Female Criminals and Female Victims: An Indian Perspectives*, DATTSONS Publishers and Publishers Distributors, Nagpur, 1987, pp. 242-249.
of term. so, it is essential that Indian scholars should come forward to carry on research for reforming the policy, objectives, and the organisation of prison work programmes for women prisoners suitable to the needs of the contemporary period.

**Rekha Saxena**\(^{139}\) (1994), authoress has conducted this study from sociological perspective. This study has been divided into eight chapters. Chapter one provides information about the concept of crime through a review of the criminological literature available on the subject. Chapter second contains information about the research methodology adopted by the authoress to collect the data in order to make this study possible. She adopted the non-doctrinal method and used the comprehensive interview schedule technique to collect the data from women offenders. In chapter third she discussed the socio-economic background of the women offenders.

In chapter fourth and fifth of the study, she explained very beautifully the viewpoints of the women offenders about the family with which they came in contact and which have had a varying influence in shaping their lives, both before and after marriage and concluded that family is the most important situation in the life of female offenders and major contributory factor to criminal behaviour among them.

In chapter sixth, authoress examined the various patterns of criminality, victim offender relationship and motivation in crime and concluded that apart from social and economic problems, and the rejection of family and social values a women’s personal behaviour and attitudes are also equally important causes of crime in females.

Chapter seventh is very informative. It consists of two parts. In part one, she described the physical structure of five prisons in order to look into the living conditions of convicted women offenders. Second part explores the women offenders experience of imprisonment and their attitudes towards the police, court and the prison officials and fellow inmates and concluded that imprisonment of women offenders and the social experiences encountered by women inmates as a result of prisonization, does bring the pains and losses to an accused. Most of the female prisons were in poor conditions. The

---

physical surroundings of most prison building was unsatisfactory, classification of prisoners and treatment programmes for female prisoners were either non-existent or markedly inadequate which may not help in their rehabilitation.

**Sabita Mishra and Amarendra Mohanty**\(^{140}\) (2002), the main objectives of this study were to find out the problems of prison administration particularly in Orissa, the conditions of female offenders in the jails and to give a setting to future investigation and to prepare a base for the best utilization of appropriate techniques in the setting up of correctional institutions for female offenders. In order to achieve these objectives scholars adopted the historical and survey-cum-evaluate methodology. The researchers collected the opinion of 150 women prisoners lodged in 13 jails in different parts of Orissa, through an exhaustive interview schedule in order to know their socio-economic conditions (profile), cause of crime and conditions of jails in Orissa in which they live. About socio-economic conditions, they found that most of the women prisoners were married, illiterate, unemployed at the time of crime, belong to Hindus religion, hails from rural areas and from middle class or lower middle class families, stricken by poverty, poor knowledge about the legal system.

About the causes of crime, they founded that beside personal rivalry, jealously, broken homes, theft, drug-trafficking and self-defence, dowry atrocity emerges as the main reason for criminality among the elderly women aged between 41-50 years.

Beside socio-economic conditions and causes of crime among women prisoners, researchers made the efforts to sum up the whole prison conditions in this short article. They found that prison conditions in Orissa are inadequate for the rehabilitation and re-integration of the women prisoners into the society after release from prison and purpose of the imprisonment is only custodial instead of being correctional.

**S.P. Srivasatava, (2005)**\(^{141}\) this paper has been divided into six parts. The first part contains the introduction. In introduction description about the finding of the justice Krishna Iyer’s Committee (1987) constituted to review the condition of the

---


women in prison and the report of the national commission for women who visited many jails all over the country to study the conditions of women has been made. In the second part, discussion about the prevailing prison conditions in India is made and found the eight major problematic areas which affect the system and need priority attention success over-crowding, delay in trail, lack of privacy and proper facilities to facilities the communication between prisoners and their families, friends, lawyers etc. Contains the brief discussion about the judicial pronouncement made to protect the right of the prisoners. It is explained that it was Maneka Gandhi’s case, which generated strong current and converting the right to life and personal liberty in Article 21 into a great shield against deprivation of human rights and the court held that “imprisonment does not spell farewell to fundamental rights.” fifth part describe the role of the Non GovernmenOs in the field of treatment after care and rehabilitation and suggested to incorporate the recommendations of the Mulla Committee made about the role which NGOs can play in respect to the treatment of the prisoners.

In last part of the paper researcher concluded that it is travesty of justice that despite a new jurisprudence coming forth from the apex court articulating new forms of rights and liberties to prisoners, it remains non-existent for a large percentage of illiterate, ignorant and impoverished masses of this country and it did not change substantially the position of prisoners or prison system in India.

**Deepti Shrivastava**\(^{142}\) (2006), through this study the researcher made an effort to identify the various problems faced by the women prisoners, causational factors behind these problems, impact of these problems on female prisoners and to suggest the various remedial measures to prevent these problems. Researcher used the both doctrinal and empirical method to carry out this study and found out that due to male-dominated jails women prisoners have to face inequitable treatment, psychological problems due to neglected gender-specific medical care, forced separation from children, fear of stigma and problem of rehabilitation after release from the jail. On the basis of these problems, she concluded that following causes are responsible such as small female prison population, poor strength of the female staff, untrained staff, poor

infrastructure facilities, lack of separate prisons, illiterate prisoners, traditional social mind, unskilled industry instructions, untrained welfare offices, lack of counseling and casual attitude of prison staff. The problems faced by women prisoners in the jails put following impacts on them such as if they were not trained in various income generated programs, they have to face further chances of exploitation, due to social stigma they can end their life, forced separation of women prisoners from their children put large on their children, inadequate child care put effects on the physical development of the child. All above stated problems put hurdles in re-assimilation and rehabilitation of the victim. In order to prevent these problems faced by the women prisoners, researcher suggested the following measures such as first of all to abolish discrimination between male and female prisoners, prevent the increasing recidivism among the women, special attention should be given towards the job training, alternative method of sentence should be used for female prisoners, special consideration should be given to the children of women prisoners and concluded that if the female prisoners can’t assimilate themselves in prison culture then the correctional process will be incomplete and due to incomplete correctional process they can’t rehabilitate themselves in the society mainstream.

Debarati Harider and K. Jaishankar143 (2007), this article has been divided into two parts by the researcher. First parts contains discussion about the six rights available to women convicts, under-trails and offenders under Article 21 and 22 of the India Constitution such as Right against inhuman treatment, torture and custodial deaths, Right against solitary confinement, Right against arbitrary arrest and detention these rights are equally apply to the women prisoners. Second part talks about the position of women prisoners in Indian jails. In order to carry out this study, researchers used the doctrinal research method.

In respect of the position of women prisoners in India, the authors held that although Right to Life under Indian Constitution has been broaden enough to include wide prisoners rights to prisoners, but unfortunately situation still prevails in the area of

women prisoners and suggested the implementation of the recommendations of Justice Krishna Iyer’s Report on women prisoners in order to improve the conditions of the women prisoners in Indian prisons.

**Deepti Shrivastava**\(^\text{144}\) (2009), “this study is the result of the project work sponsored by the bureau of police research and development. The main objectives of the study were to (i) get a clear picture of status of women prisoners and their children, (ii) identify the judicious pronouncement about women prisoners and their execution appraisal in Indian prison (iii) identify causational reasons responsible for non-implementation of judicial pronouncements.

In order to conduct this study, authors used the both doctrinal and non-doctrinal methods and the primary and secondary data. Primary data was collected through interview schedule and observation method.

She has found about the status of women prisoners that unfortunately still there are mixing custody existing for various categories of offenders, prostitutes, procuresses. Besides this lack of proper educational facilities still existing although free legal aid facilities are available in prisons but very few lawyers visited prisons to give much needed advice to the inmates. Women prisoners who obtained bail were still suffering in prisons. About the implementation of judicial pronouncement, it was found that the status of judicial pronouncement implementation for women and children virtually in at a middling level, it is still required realistic attention, recognition and protection, which did not yet receive the adequate attention. Further, she found the following causational factors such as lack of proper training of prison officers, small prison population, poor staff inmate ratio, lack of co-operation among prison officers, lack of sufficient funds and held that there is a strong need to foster effectuation of judicious pronouncement to carryout prison administration. She put the following recommendations such as development of individualized programming plan, using the mechanism of rewards and punishment for maximum implementation, need of gender sensitization of prison officers, need of extra funds, coordination with NGOs, need to improve prison culture,

---

improvement in service conditions etc. based on the interaction with the women prisoners and key prison personnel.

**Kunwar Vijay Partap Singh** (2010), the main objective of the study was to examined whether rights and privileges available to women prisoners under national and international laws are practically available to women prisoners or not in Amritsar central jail. In order to achieve this objective researcher used the interview schedule technique to collect the primary data from 15 women prisoners confined in the Amritsar jail and establish that living conditions available to women prisoners were conducive to enjoy their rights and privileges available to them beyond the deprivation of liberty except these problems such as lack of proper space to have interview with family members, relatives, friends, non-availability of gender-specific health care facilities. Author recommended that government should implement the provisions of the model prison manual, 2003 and guidelines of Supreme Court in order to safeguard the rights of women prisoners.

**R.K. Tiwari** (2011), in this article the author highlighted the gender-specific needs of pregnant women prisoners, of mother women prisoners with children before birth and after birth of the child, child care, protection from physical abuse etc and the gender-specific rights such as health rights, right to contact with the family members, rights available to pregnant women prisoners set out in different international and domestic documents. He examined the guidelines issued by the Supreme Court in R.D. Upadhyay’s case in order to provide gender-specific rights to women prisoners and suggested that government should take positive steps to implement the Supreme Court guidelines and international provisions to improve the conditions of the women prisoners.

**Ashish Virk** (2011), it is very informative article. She has divided this article into four parts. In the first part of the article, she discussed the international historical
development of women jails and highlighted the reasons responsible for the negligible attention given to the female criminality and the seminal work of various feminist criminologists, who challenged the conventional criminological theories of criminality and held that women’s relationship to crime problem needs to be understood not only in terms of their offending behaviour, but also in relation to women’s experience as victim in relation to women’s experience as victim of crime. In second part, she discussed the conventional theories of female criminality along with the significant causative factors give rise to female criminality. Third part of the paper is significant from the perspective of present study. In this part she described the observations made during an empirical study of the sole exclusive women jail Ludhiana. She held that environment within the four walls of prison is not suitable for the rehabilitation and reintegration of women prisoners. Moreover, such environment makes the women prisoners loose all their morality, tenderness, politeness making their behaviour their behaviour anti-social. Hence, prisons with such environment could not be considered as correctional homes, they have merely becomes stores of human beings.

She held the vocational training imparted to them in the form of embroidery, stitching candle making etc. neither sufficient for their economic independence nor the inmates show much interest in these activities. Therefore, suggested that in order to make the prisons, correctional homes, the laws and manuals dealing with prison administration should be thorough revised and amended regularly taking into consideration the changing nature and dimensions of crime in society. According to her the Punjab Prison and Correctional Service Bill 2010, should be speedily operationalized because this bill have special focus on women prisoners as well.

In fourth and the last part of the paper, in order to make imprisonment useful which could help in rehabilitation of prisoners and pull of the real purpose of imprisonment, she suggested to adopt some other modes of punishment for women prisoners successfully working in USA’s criminal justice system in lies of imprisonment.
Kamla\textsuperscript{148} (2011), in this article, the researcher highlighted the violation of human rights of women prisoners and steps taken by the Indian Apex Court to protect their human rights. Researcher used the doctrinal method for this purpose. She described that women prisoner have to face many problems in the male-dominated prisons. Because adequate clothing, toilet facilities were not made available to them. The facilities for education, vocational training and recreational facilities were always remain very limited for them. As majority of women prisoners were from rural background, illiterate so had no courage to communicate their needs and grievances to prison staff in the jails. In order to stop the violation of human rights of the women prisoners the Apex Court of India through judicial activism gave a new dimension to the word ‘personal liberty’. Court issued a number of guidelines such as to provide legal aid to needy women prisoners and held that punishments in civilized societies must not degrade human dignity. Judiciary issued the number of guidelines for states and prison administrations to be followed in order to stop the violation of human rights of women prisoners. According to judiciary the prison manuals are mostly callous colonial competitions and even their copies are mostly beyond the prisoner’s ken.

Mukesh Garg and Nareshlata Singla\textsuperscript{149} (2012), in this study researchers considered the rights of women prisoners and highlighted the problems faced by them in the prison. They used the non-doctrinal research method and divided the paper into the five parts. First part contains general introductions about women in India. Part two described the various constitutional provisions of the constitutions of India such as article 14, 15 which provide equal status to the women. In third part, researcher described the basic human rights, constitutional and statutory rights available to the women prisoners in the jails. In fifth part, discussion about the problems faced by the women prisoners in the jails is made. According to researcher, due to small numbers of women prisons, they have to face over-crowding which generates other problems for them. Due to made-dominated prison system women prisoners have to face shortage of


proper necessities such as proper accommodation or recreation facilities, women prisoners also have to suffer torture both physical and sexual in custody. They also did not get satisfactory legal aid in prisons. Therefore researchers suggested that in order to prevent the problems faced by the women prisoners the efforts should be made on war footing to reduce the strength of women under trial prisoners and for this purpose the procedure of plea bargaining should be adopted. Lok Adalats should be organized frequently. Fast track courts should be substantially amended. Penal of visitors should be appointed on permanent basis. Goal and aim behind awarding the punishment should be the reformation and rehabilitation of the women prisoners.

J.J. Rath\textsuperscript{150} (2012), this paper is an outcome of the doctoral research carried out by the author on “Right to privacy of the women prisoners in the jails of Orissa: A critical analysis”. The main objective of the author was to unearth the socio-economic conditions of the female inmates in the jails of Odhisa. For this purpose author used the both doctrinal and non-doctrinal method of research. He studied the socio-economic conditions of the women prisoners in the terms of the following variables: age, religion, housing conditions, marital status, number of children’s, place of stay, educational profile, nature of family, employment status, monthly family income of number of dependents, other sources of survival sufficiency of family income. He find out that majority of women were married, belong to the age-group of 40-60 years, from joint families, living in kacha houses, most of women had two children’s, staying in their in laws families before committing crime, illiterate, fathers of the most of the respondents were also illiterate, majority of women prisoners belong to Hindu religion, had low rate of education and concluded that ultimately, low literacy rate, low family income, illiteracy of the parents, apathetic behaviour of the in-laws, are the contributing factors towards involvement of women in crimes. Author suggested that to protect the rights of women prisoners the government must endeavour to take steps towards improvement of the socio-economic conditions of women prisoners. For this purpose the government should provide educational, vocational training and counseling programmes to women prisoners. Because, education either in the form of elementary education or in the form

of soft skills is the only way to make the women prisoners socio-economically sound. Follow-up study of released prisoners should be made to assess the impact of rehabilitation oriented programmes so as to identify the problem areas and to make improvements in the prison rehabilitation policies.

Romana\textsuperscript{151} (2010), through this study, researcher made the efforts to highlight (i) the gender-specific needs and the gender-specific rights of women prisoners set out in international and domestic documents (ii) various facilities available to women prisoners in the central jail located in the capital city of Jammu and Kashmir (iii) Implementation of the various guidelines made by the honorable Supreme Court of India in R.D. Upadhyay v. State of Andhra Pradesh and others.

For this purpose she used the both doctrinal and non-doctrinal methods. She found out that there is wide gap between theory and practice vis-à-vis women prisoners rights leaves much to be desired on the part of the government and prison administration and concluded suggested that there should be transparency and access to the prisons. In order to meet the expectations that prison should meet the demands of rehabilitation and reformations, in addition to those of retribution, punishment, and deterrence, government should solve the problem of prisoners first. Government should take affirmative steps to reform prisoners and make them better prisoners.

From the review of the important literature related to the topic under study, researcher found that majority of studies has been done empirically from the both sociological as well as criminological point of view. All these studies concluded that conditions of women prisoners were unsatisfactory due to inadequate living conditions, absence of adequate treatment programs for the rehabilitation and reintegration of women prisoners, non-implementation of judicial pronouncement in real terms. These studies done from 1994 to 2012, shows that government had never made any concrete efforts to improve the conditions of women prisoners accept the appointment of committees. Efforts made by the Committees also wasted due to non-implementation of the recommendations regarding the women prisoners given by them.

1.9 OBJECTIVES OF THE STUDY

The objective of any work is very important as they provide those lines of action which are to be followed. The present study seeks to examine the following objectives:

1. To find out the socio-economic status of women prisoners.
2. To know the nature and extent of crimes committed by women prisoners.
3. To make an in-depth examination of situations in which they live in prisons.
4. To find out the major causes responsible for the abuse of their rights.
5. To find out the problems faced by the women prisoners due to abuse of their rights.
6. To develop suitable approach to prevent abuse of their right through this study.
7. To find out appropriate suggestions for the rehabilitation and reintegration of women prisoners.

1.10 RESEARCH QUESTIONS

In the light of the objectives of the study the following research questions are framed:

1. What are the rights available to the women prisoners?
2. Whether the present prison conditions are adequate for the women prisoners?
3. What should be done to stop the abuse of women prisoners’ right?
4. What changes should be brought in age-old prison Acts?
5. What effective measures should be adopted for reformation and rehabilitation of women prisoners?

1.11 HYPOTHESIS OF THE STUDY

1. Problems faced by women prisoners are mainly due to being placed in a prisoner which is structurally not suitable for them.
2. Existing prison rules and regulations are not suitable with the administration of women’s prison.
3. The purpose of imprisonment is still custodial not the reformation and rehabilitation of the women prisoners.
1.12 SIGNIFICANCE OF THE PRESENT STUDY

Studying the subject of research is not only to understand the concept of problem but it also helps to contribute something to society in direct or indirect way. Similarly this study holds significance for women prisoners, the prison administrators, the policymakers and for the society.

The study brings out the short comings present in prison system regarding the treatment of the women prisoners. By eliminating these shortcomings the Government and prison administrators can bring the prison reform to prevent the abuse of women prisoner’s rights and thus results in the improvement of conditions of the women prisoners in the jail. Improved living conditions and human treatment will help the women prisoners’ rehabilitation and reintegration into the society and therefore prevent the re-offending among the women prisoners.

1.13 LIMITATION OF THE STUDY

Every study conducted may have some limitations, unfortunately this study also have some limitations.

Firstly, it is not an easy job to collect the data from criminals as no one knows what is going on in their minds. Secondly, researcher has to rely on whatever prisoners or prison staff says about each other and about the living conditions available to prisoners. There is no other source to testify the saying of these two groups of the prison world.

1.14 RESEARCH METHODOLOGY

1.14.1 Nature of Study

The present study is descriptive as well as analytical in nature.

1.14.2 Universe of the Study

At geographical level, the study is confined to seven central jails of Punjab situated at Amritsar, Gurdaspur, Jalandhar, Bathinda, Ferozepur, Patiala and Ludhiana (special women jail).
The reasons for selecting central jails are: central jails consists of sizeable population of both long and short terms, occasional and habitual prisoners, whereas the sub-jails and district jails are usually small jails located at the immediate town which provide alternative arrangements for keeping the under-trails before they are convicted and shifted to central prisoner population of central jails consists of prisoners convicted for commission of different types of crimes and undergoing different term of imprisonment. Central jails have stable population of prisoners. The study is concerned with women prisoners only whose cases are decided by the court and who are sentenced to undergo a term of imprisonment.
Table 1.2
Population of Women Prisoners at the Time of Data Collection

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Central Jails</th>
<th>Number of Women Prisoner</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Convicts</td>
<td>Under-traits</td>
</tr>
<tr>
<td>1.</td>
<td>Amritsar</td>
<td>49+8*  = 57</td>
<td>102</td>
</tr>
<tr>
<td>2.</td>
<td>Bathinda</td>
<td>37</td>
<td>74</td>
</tr>
<tr>
<td>3.</td>
<td>Ferozpur</td>
<td>45</td>
<td>89+2** = 91</td>
</tr>
<tr>
<td>4.</td>
<td>Gurdaspur</td>
<td>11</td>
<td>71</td>
</tr>
<tr>
<td>5.</td>
<td>Jalandhar</td>
<td>27</td>
<td>58</td>
</tr>
<tr>
<td>6.</td>
<td>Ludhiana</td>
<td>104</td>
<td>124</td>
</tr>
<tr>
<td>7.</td>
<td>Patiala</td>
<td>44</td>
<td>53</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>317</td>
<td>573</td>
</tr>
</tbody>
</table>

Source: According to the information as provided by the prison officials at the time of data collection.

* Were Foreigner Prisoners who had completed their term of imprisonment but still in jail.

** Were Under trial eunches apprehended for unnatural offences u/s 376 of Indian Penal Code.
1.14.3 Sample Size

At the time of data collection, total number of women prisoners’ population was 317. Researcher decided to interview all the 317 women prisoners because sampling was not possible due to:

- Heterogeneous population of women prisoners.
- Non-availability of information about the characteristics of women prisoners.
- Refusal by prison authorities of some jails to provide any information about women prisoners in written form.
- Due to variation in number of women prisoners’ population in different jails.

The researcher was able to interview only 216 women prisoners due to

- Non-cooperation of the prison authorities and staff.
- Absence of some women prisoners at the time of interview due to Mulakat with their family members, or “chutti”.
- Refusal by some women prisoners to provide any information due to afraid from prison authorities.
- Hence, the sample size for the present study consist of 216 women prisoners.

1.14.4 Method of Data Collection

Data is collected from both primary and secondary sources. Keeping in mind the topic of the study, objectives and type of women prisoners’ population, researcher has adopted the schedule method and utilized the structured interview schedule technique to collect the primary data as required for the study from the women prisoners.

1.14.5 Construction of Interview Schedule

Interview schedule is constructed in the light of the objectives and the research questions of the study. Interview schedule consists of 78 questions and divided into 14 segments. Interview schedule consist of 12 open-ended questions and 66 closed-ended questions. Data regarding the following aspects is collected through the interview schedule:
Introduction and Research Methodology

1. Socio-Economic profile of women prisoners.
2. Criminal information regarding types of crime, term of imprisonment, reason from crime, relation with the victim etc.
3. View of women prison regarding specific prison conditions such as accommodation, nature of barracks, food, drinking water, bedding, clothing, sanitary and personal hygiene conditions etc.
4. Institutional correctional programmes available for women prisoners: Educational and vocational training programme.
5. Health care facilities available for women prisoners.
6. Facilities available for children of women prisoners.
7. Inspection/visits paid by higher authorities to prison and their behaviour (with women prisoners) during inspection.
8. Facilities available to maintain contact with the outside world.
9. Visit by family members.
10. Work opportunities available for women prisoners.
11. Relation between the staff and women prisoner.
12. Legal aid facilities available for women prisoner.
13. Major problems faced by women prisoner in the jail.
14. Sexual abuse faced by women prisoners.

Through non-participant observation tool, researcher made the efforts to know more about how women prisoners lives in prison, their behaviour with the staff and co-inmates, their daily routine etc.

1.14.6 Pre-Testing of the Interview Schedule

In order to get the reliable and valid data according to the objectives of the study, the interview schedule was pre-tested on 25 women prisoners confined in the Amritsar central jail. During the pre-testing of the interview schedule, researcher found
some questions lengthy, more time consuming, irrelevant, not yielding relevant information. Researcher also found some relevant questions missing. Therefore, irrelevant questions were deleted and few new questions were added according to the objectives of the study. In this way the researcher brought the interview schedule into the final format.

1.14.7 Processing and Analysis of Data/Statistical Tool

After the completion of data collection the whole data collected through the interview schedule was checked for any discrepancies and incompleteness.

Most of the questions in each interview schedule were pre-coded. After checking the completeness and accuracy of the data all the other questions which were not pre-coded, they were provided suitable codes. Qualitative data was converted into quantitative data by providing the suitable numerical codes. After providing the relevant codes, the whole quantitative data was filled on the code sheet prepared by the computer programmer. Data is processed with the help of SPSS.

1.14.8 Presentation of Data

In order to represent the processed data, univariate tables are used. These tables are constructed with the help of the computer. For graphic representation of data, bar and pie charts are also used where needed. Percentage of all the responses is taken into account. Descriptive analysis is used to convert the numerical information into the qualitative facts.

1.15 COLLECTION OF DATA

The collection of data for any study relating to prison population is not an easy job. The first problem is that of visiting the jails and collecting the statistics. Prisons are closed institutions. Prison is not recognised as an independent system of power but it acts as an instrument of the state. It acts as an institution of social control and symbol of legitimate coercion. So, Government does not permit everyone to visit the jail. A specific permission to that effect has to be obtained from the concerned authority, the Director General of Prisons. It is not an easy job to get permission from director general of prisons. In present study, researcher had to face problem in getting the permission
from DGP. Her first application for permission was rejected by the DGP. He asked the researcher to change the title of her study, as according to him, title of the study itself against their department and assured the researcher that he will definitely grant the permission after the change of the title of the study. But it was not possible for the researcher to change the little of the study after registration as per the Ph.D. Guidelines of the university at that time. Only after one and half year, from the date of refusal to grant permission by DGP, researcher’s supervisor able to get the permission with the help of very kind police officer’s undertaking that nothing objectionable will be written against the prison department.

1.16 RAPPORT WITH THE WOMEN PRISONERS

At the entrance gate of every central jail, guard asked the researcher about the purpose of the visit and whether she has the permission from the Director General of Prisons for the same purpose, only on showing the letter of permission, superintendent allowed the researcher to enter the jail and collect the data for her researcher work. In each jail, the superintendent or deputy superintendent instructed the matron/warden to take the researcher around the women annexure and introduce her to the inmates. They strictly instructed the researcher not to cross the second internal gate of the jail alone due to the presence of the male prisoners near the gate and not to ask very personal questions from the women. In few jails, superintendent of the jail also advised the researcher to keep some distance from women prisoners, because some women prisoners were suffering from chronic diseases and due to shortage of the proper space, they were kept along with the other prisoners.

In the beginning, the inmates were doubtful about the motives of the researcher and were looking at her in a strange manner. They thought that the researcher is a newly appointed teacher. Some considered her new lady doctor and started telling her about their gynecological problems. At this instance she felt very helpless and pity for those ladies and explained them that she is an university student and she is here to collect the data for her study. Researcher stressed the fact of her being a student and that she is not related in any way to prison department and will not disclose any information told by them. In this way researcher obtained their cooperation and promised the full confidentiality of their responses.
During the data collection, women prisoners often asked her, how the study would help them. Regarding this keeping in view the ethics of the research, researcher explained them truly, that although their co-operation would not help in lessening their term of sentence but definitely helped to improve their living conditions in the jail and therefore, prevent the abuse of their rights which results into availability of appropriate treatment and therefore facilitate their rehabilitation and reintegration into the society after release from the prison.

In order to gain their confidence and motivate them to answer the question, researcher showed her deep interest in their stories. She listened patiently everything told by the women prisoners about their case histories, police atrocities, dishonesty of lawyers, their abuse by the victim or victim’s family etc.

Women prisoners were contacted in their residential barracks, outside the barracks, in verandas as well as on their work-place between 10 am. to 5 pm. All interviews were conducted in privacy. All the interviews were conducted in Punjabi or Hindi language easily understandable by the prisoners.

During the data collection, researcher found some women hesitant to express their views about living conditions, staff-inmate relationship etc. due to fear from prisons authorities. Researcher found that in comparison to illiterate, literate women showed the keen interest to open secret of the prison administration. Some women prisoners told the researcher that every year student come and asked them different types of questions. Sometime the questions were so intimate that they were not able to provide answer to those questions. According to them everyone came here for their own benefits, no one did anything for them. They had become fed up with such types of interviews.

Some women prisoners asked for favours from the researcher. Some requested the researcher to make a phone call to their family members and convey them to pay visit to them, as they were in need of money. Some inmates asked researcher to make a call to their lawyers and ask them whether there had filled the bail application/appeal or not. Some poor prisoners, whom no one comes to meet, requested the researcher to bring some old cloths, hair bands or clips etc. for them. During data collection,
researcher found that the women prisoners were anxious about their children's well being. They want their early release from the jail.

1.17 SECONDARY DATA

Secondary data for the study is collected from both the published and unpublished sources and from internet.

Published Sources for the Study Includes:

- Books, journals, Magazines, Newspapers, Researcher Papers, AIR India Reporters.
- Various publications of International bodies and their subsidiary organs.
- Reports of the Committees and Commissions appointed by the State and Centre Government on Prison Reforms.
- Reports of the Law Commission of India.
- Internet Sites.

In order to collect secondary data, besides, Guru Nanak Dev University’s, main and departmental libraries, researcher has visited the libraries of the following institution and thoroughly study the literature taken from these institutions.

- Indian Law Institute, New Delhi.
- Punjab University, Chandigarh.
- Panjabi University, Patiala.
- North- West Centre of Indian Council of Social Science Research, Chandigarh.
- Rajiv Gandhi National Law University, Patiala.
- University of Delhi, Delhi.
• National Archives of India, New Delhi.
• L.N.J.N. National Institute of Criminology and Forensic Science.

1.18 PLAN OF THE STUDY: CHAPTERIZATION

The present study is divided into six chapters:

Chapter-1: Introduction and Research Methodology

Beside brief introduction about the topic, discussion of various initiatives both national and international taken to improve the conditions of women prisoners is made in this chapter. An effort is made to trace the historical background of women crime, respective punishment for such crimes and development of jails, treatment meted out to the prisoners. Research methodology adopted to conduct this study is also discussed in this chapter.

Chapter-2: Rights of Women Prisoners: A Legal Perspective

In this chapter a closer look is 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 perspective. Role played by the judiciary to define the rights of the prisoners in general and gender specific rights of women prisoners in particular is also discussed. The chapter contains three parts. Under National perspective, researcher has discussed the both Central and State Penal laws, Substantive and Procedural Criminal laws containing specific provisions regarding women prisoners. Part-II contains International perspectives relating to women prisoners human rights instruments have provisions deals with women prisoners. In part III of the chapter contains of regional human rights instruments.

Chapter-3: Socio-Economic and Criminal Profile of Women Prisoners

This chapter contains an analysis of the socio-economic and criminal profile of 216 women prisoners, who were surveyed for this study. It has been divided into two parts. Part one of this chapter contains information regarding the socio-economic profile of women prisoners. In part second of the chapter, criminal profile of women prisoners has been discussed.
Chapter-4: Conditions of Women Prisoners in Punjab: An Empirical Analysis

In this chapter researcher has made an earnest effort to represent the actual conditions women prisoners on the basis of information obtained from the survey of 216 women prisoners confined in seven jails in Punjab. The conditions of women prisoners accessed in terms of the living conditions and rehabilitation and reintegration programmes available for women prisoners. Living conditions within jail for women prisoners has been reviewed in terms of accommodation, nature of barracks, sleeping facilities, food, clothing and bedding, sanitation conditions, water supply, health care facilities, sexual abuse and staff-inmate relationship. Rehabilitation and Re-integration of women prisoners analysed in terms of existence of classification and segregation, educational, vocational training programs, contact with outside world, visit by higher authorities, free Legal Aid, work programs for women prisoners, correctional counseling, after-care programs, recreational facilities and services. This chapter of the study also contains the discussion about various types of problems faced by women prisoners due to abuse of their rights find out from the analysis of the conditions of women prisoners in central jails in Punjab.

Chapter-5: Conclusions and Suggestions: Is devoted to the conclusion and suggestions, an appraisal of the discussion made in the previous chapters is made and suggestion are given to reform the prison system in Punjab to prevent the abuse of both general and particular gender-specific rights of women prisoners in order to facilitate their rehabilitation, re-integration in the society after release from the prison.

1.19 OPERATIONAL DEFINITIONS

Crime: Crime is any act or behaviour by a person which violates the norms of society. It may be a theft, robbery a murder, sexual abuse or kidnapping.

Women Prisoner: A women who has been found guilty of criminal behaviour convicted under Indian Penal Code and sentence to Imprisonment.

Under-trials: Under-trials are those who are housed in prisons and for them the trial is pending before the court.
Remandant: A person who has been arrested under suspicion will be produced before a magistrate with 24 house and them kept in the jail for 15 days before trials

Abuse

Physical Abuse: Refers to striking or beating another person with the hand or an object, but may include assault, with a knife, gun or other weapon. Physical abuse also includes such behaviour as locking someone in a closet or other small space, depriving someone of sleep, burning gagging, or trying them up etc.

Sexual Abuse: Inappropriate sexual contact between a child or an adult and someone who has some kind of family or professional authority on them. Sexual abuse may include verbal remarks, founding or kissing, or attempted or completed intercourse

Verbal Abuse: Refers to regular and consistent belittling, name – calling, labeling, or ridicule of a persons but it may also include spoken threats. It is one of most difficult forms of abuse to prove because it does not leave physical stars or other evidence, but it is nonetheless hurtful

Psychological: Emotional abuse covers a variety of behaviour that hurt or injure others even through no physical contact may be involved. In fact, emotional abuse is a stronger predictor than physical abuse of the likelihood of suicide attempts in later life. One form of emotional abuse involves the destruction of someone’s pet or valued possession in order to cause pain. Other behaviour in this category include silent treatment, shaming or humiliating someone in front of others.

Right: Right is an interest recognized and protected by state. Generally right are of three types, legal rights, moral rights and fundamental rights.

Fundamental Rights: These are some essential basic natural and inalienable right or freedoms which subject to provisions of constitution, cannot be violated, or inferred with, by any law, order, regulations or Act of Govt.

Human Right: Human Rights are those minimal rights that every individual must have by virtue of his being a member of human family irrespective of any other considerations.
Central Jail: Central jails means any prison in which criminal convicted prisoners are received for the purpose of underlying their sentence by transfer from any other jail in which such prisoners are not, when committed to prison, in the first instance are ordinarily received.

District Jail: District jails mean any prison in which prisoners from one or more districts are, in the first instance, ordinarily committed and includes every jail other than a central jail or special jail.

Internee: Foreign prisoner confined in a camp awaiting deportation after compilation of prison term.

Correction: Correction is the systematic, organized effort by society to punish offenders, protect the public, and change an offender’s behavior.

Family of Procreation: The family one creates through, and following, one’s marriage.

Family of Orientation: the family into which one is born.

Gender-Specific Programming: are those programs that take into consideration the difference between male and female offenders, this term is generally applied to those programs that focus on the unique characteristics and needs of female offenders.

Literacy Rate: Literacy rate means the percentage of people with the ability to read and write.

Parole: A process by which a prisoner is allowed to be conditionally released during the term of Imprisonment.