CHAPTER IV

Statutory Provisions Relating to Prisoners in Custody

"When they arrested my neighbor I did not protest. When they arrested the men and women in the opposite house I did not protest. And when they finally came for me, there was nobody left to protest". ...... Lord Chancellor Sankey.

The existing legal provisions relating to the protection of accused person both in police and judicial custodies under the procedural law and under the substantive law are presented.

4.1 Rights of Prisoners under Substantive Law.

The police departments is the chief criminal law enforcing authority in our country and are duty bound to protect the life and property of the citizens. While performing their duties the police officers are expected to, whenever they encounter any person, to be observed with necessary care and caution to exercise their powers to restraint and understand the constraints as in their day to day dealings.

As per the Code of Criminal Procedure (Cr.P.C) or under the Indian Constitution if any accused is needed to be arrested by the police is, he himself or herself submits to arrest the police officer should not touch the body of the accused, if the accused tries to escape from
arrest than the police officer may use necessary force to effectuate the
arrest incase of offences punishable with death, the police officer may
cause death of such accused person. But it is evident that the police
officers using more force than required even though the law prohibits
them to use such force and causes death or rape of such accused
person both in police custody and prison custody, it is more against
women when compared to men. In a traditionally bound society like
India, the police officers naturally have an added responsibility of
honouring and protecting the individual liberty of citizens. However,
there are so many allegations of offences against men and women by
the police officers themselves. The offences are due the lack of
responsibility towards the complaints and fundamental rights of
citizens hence occasionally they are also committing offences on the
men and women by taking advantage of their possession, inhuman
and unlawful third degree torture on the men in police stations
became quite common. In between, there are so many regular reports
of ill-treatment of men and women complainants, misbehavior with
the offenders, illegal detention, threatening, outraging the modesty of
accused, etc. Thus, of many forms of violence against men and
women, custodial violence involving death, rape and molestation has
clearly been on the increasing rate. Custodial rapes and custodial deaths in police stations by the police are the most notorious form of violence against citizens. It is being reported regularly and increasing frequency over the last few decades. Such reports are not confined to any particular State it was more in Uttar Pradesh and Bihar when compared to Andhra Pradesh. There are reports from almost all the corners of the country at an alarming stage. Though the exact statistics of violence in police custody are not available as most such incidents are hushed up still there are some cases brought to light by the media and social activists. Whenever such incidents are occurred in the Press, the State Government routinely orders either a magisterial or judicial enquiry. No one is sure of the fate of the recommendations of such enquiry committees. It is common knowledge that there are more suggestions which were not attended to than those which were implemented. So there is a need to review about the custodial offences, the existing legal remedies, the suggestions already made for the prevention of such illegal state actions and make further suggestions. The law of rape is defined in Sec. 376 of I.P.C. The gist of the offence is that a man has a sexual intercourse with a woman against her will and without her consent. The inadequacy of the law of
rape under Section 376 of the I.P.C. is manifested in a number of judgments. One such important case is Mathura rape case¹. The acquittal of the two constables Ganapat and Tukaram by the Supreme Court, who committed rape on an innocent minor girl Mathura in the police station on the ground that there was no evidence of resistance by the victim was criticized by all sections of the society. The strong protests by women organizations and social organizations social workers and academicians to protect the victims of rape, especially from the police custody, led to 1st criminal law amendment in 1983. This Amended Act not only revised the existing Sections, but also inserted new Sections in Indian Penal code and in Indian Evidence act. This has provided more protection to women prisoners in both police and prison custody. Similar treatment is common even in prisons and other institutional homes which are under the management of State or central Government.

Custodial rape

Sec. 376(2) of the I.P.C. made the following acts as custodial rape and provided severe punishment. They are

1. AIR 1979 SC 185.
2. A police officer committing rape in the local area to which he is appointed or in any police station whether or not situated in such local area or on a woman in his custody or in the custody of a police officer subordinate to him.

3. A public servant taking advantage of his official position committing rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him.

4. Any person being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, advantage of his official position and committing rape on any inmate of the institution.

5. Any person concerned with management or being on the staff of a hospital, taking advantage of his official position and committing a rape on a woman in that hospital.

This section prescribes mere detent punishment of not less than ten years of rigorous imprisonment but which may extend to life and also fine. However, the court is empowered to reduce the minimum
prescribed punishment only after recording adequate and special reasons.

The second important amendment made in the Indian Penal Code in 1983 was the insertion of Sections 376B, 376 C and 376D to deal with custodial sexual abuse not amounting to rape. Though such a sexual intercourse does not amount to rape, still the accused persons are held guilty and punishable with imprisonment extending to five years and shall also be liable to fine.

**Inquiry by Magistrate in to cause of Death (Custodial Death):**

Section 176 of Cr.P.C envisages that,

1. When the cause of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174 any Magistrate so empowered may hold an enquiry in to the cause of death either instead of, or in addition to, the investigation held by the police officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry in to an offence.
(1-A) Where,

(a) Any person dies or disappears; or

(b) Rape is alleged to have been committed on any women,

While such person or women is in the custody of the police or in any other custody authorized by the magistrate or the court, under this code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the magistrate or the metropolitan magistrate, as the case may be, within whose local jurisdiction the offence has been committed.

2. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section the magistrate shall, wherever practicable, inform the relatives of
the deceased whose name and addresses are known, and shall allow them to remain present at the inquiry.

(5) the judicial magistrate or the metropolitan magistrate or executive magistrate or police officer holding an inquiry or investigation as the case may be, under sub-section (1-A) shall, within twenty four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil surgeon or other qualified medical person appointed in this behalf by the state government, unless it is not possible to do so for reasons to be recorded in writing.

All these offences are non bailable and cognizable offences. But arrest can be made without warrant or without orders from the Magistrate. This provision is discriminatory and advantageous to the public officials like the police officers and prison authorities. By taking advantage of their official position, unlawfully they threaten the victim and their family, and also the witnesses. If these persons are not arrested immediately, they have ample time to destroy the evidence. An amendment in this regard is necessary so that they can be arrested without any delay and magisterial enquiry. The offence should also be made a non bailable and non compoundable one.
The same Amendment Act 1983, adds a new Sec. 114-A to the Indian Evidence Act, 1872, which states:

"In prosecution for rape under clause (a), (b), (c), (d) of sub-section (2) of Sec. 376 of the I.P.C, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent."

The higher judiciary has shown high concern towards innocent victims and this can be firmly said in as much as the testimony of a victim is considered to be the best evidence and such victims are primary witnesses. This principle is by now well established through a catena of judgments from the Apex Court.

In rape cases and custodial deaths, the court must bear in mind the human psychology and behavioural probability when assessing the testimonial potency of the victim’s version. Krishna Iyer J. aptly observed:
"A socially sensitized judge is better statutory armor against gender outrage such as rape than long clauses of a complex section with all the protections written into it".

The trial court will be under a legal obligation to presume that the prosecutrix did not give her consent and would be deemed to be under moral obligation to presume that no woman will come forward to make a humiliating statement against her honour of having been raped unless it was happened. This view now finds favour with the Supreme Court also, as is evident from various judgments pronounced by it. New Section 53.A was inserted by the Code of Criminal Procedure (Amendment) Act, 2005 to provide detailed medical examination of person accused of rape after arrest. This Section also helps the victim to prove their case easily. Thus this Section says that when a person is arrested on a charge of committing an offence of rape or attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such practitioner within the locality, by any other registered medical practitioner, acting at the
request of the police not below the rank of sub inspector, and for any person acting in good faith in his aid and under his direction, to make such force as is reasonably necessary for that purpose.

The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars.

(i) The name and address of the accused person by whom he was brought.

(ii) The age of the accused.

(iii) Marks of injury, if any, on the person of the accused.

(iv) Other medical particulars in reasonable detail

Further the report shall state precisely the reasons for each conclusion arrived at. The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the magistrate referred to in Section 173 as the part of the documents referred to in clause (a) of sub-section (5) of that Section.
Another provision was introduced in Cr.P.C. by the same Amendment Act to protect the victim from the blame of media publicity. It was made mandatory for the trial of rape cases in camera except that the trial court may in its discretion permit any person to have access to the court room. And further, printing or publishing of such proceedings are not lawful without previous permission of the court.

Indian women are known worldwide for their decency and shy nature. In a judgment delivered the Honourable Supreme Court while convicting three rapists of a minor girl had directed that all such trials must be held incamera. This ruling has been widely welcomed as it will check character assassination and humiliation of the victim in the public court.

Another Section 228-A was also inserted in I.P.C. to provide that the printing or publishing of the name or any matter which may make known the identity of the victim of rape is punishable with imprisonment for a term which may extend to 2 years and with fine. But such printing or publishing is permissible only under a written order of the officer-in-charge of police station making investigation or with the authorization in writing of the victim or if the victim is dead.
or a minor or of unsound mind, with the authorization of the next kin of the victim. Further, this Section prohibits the publication of court proceedings except with the previous permission of such court and non-compliance of it is punishable with imprisonment extending up to two years and also fine. But the publication of judgments of High Courts and Supreme Court does not amount to an offence.

When trials are held in-camera, it would not be lawful for any person to print or publish any matter in relation to the proceedings of the case, except with the previous permission of the court as envisaged by Sec. 327(3), Cr.P.C. This would save further embarrassment being caused to the victim of rape again on the open court. Whenever possible, it would be more desirable that the cases of sexual assaults on the females are tried by female judges, so that the prosecutrix can make her statement with greater care and assist the court to properly discharge its duties. The courts should, as far as possible, avoid disclosing the name of the prosecutrix in their order to save further embarrassment to the victim of sex crime.

One of the broad principles flowing from the above discussion is with respect to the right of privacy which is implicit in the right to life and personal liberty guaranteed to all persons of the country by...
Article 21. "A person has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned".

From the above account, it is clear that the custodial offences, like death in the police stations and incidence of rape in the police stations, by the police officers are happening quite often. Despite the police officers are being the legal custodian of the offenders and therefore large responsibility is present on him for protecting the honour of arrestee, the men in uniform commit the offences. Even the strict legal provisions and severe punishments imposed on the offending officers are not acting as a deterrent. It is in this context that a review of powers of police officers dealing with the arrestee and the loopholes, if any, in the existing legal provisions under Cr.P.C. are to be reviewed.
(ii) Rights of Prisoners under Procedural Law.

The Code of Criminal Procedure is designed to create the necessary machinery for the prevention of crime, arrest of the suspected criminals, collection of evidence, determination of guilt or absence of innocence of the suspected person in a trial and imposition of proper punishment on the guilty person. Thus, the object of Code of Criminal Procedure is to provide a suitable mechanism and the just procedure for the enforcement of criminal law.

Though the Code of Criminal Procedure is liberal and forward looking with the inclusion of several provisions to safeguard the interests of the accused, it has failed to distinguish between criminals in general and women as accused. The special protections given to the women accused, if any, are negligible. There is a need for special provisions for women accused at every stage as they form a different group in the Indian society in general and in the treatment from police in particular. Keeping this broad view, the provisions of Code of Criminal Procedure are reviewed under two main headings: (i) pre-trial and (ii) during the trial.
Pre-trial Procedure

The police force is an instrument for the prevention and detection of crime and is established and enrolled by every State Government under the Police Act, 1861 or under a State enactment replacing the Act of 1861.

Investigation is the first stage to be conducted by the police officer or any other authorized person. It includes all the proceedings under the Code of Criminal Procedure for the collection of evidence. Broadly speaking, the investigation of an offence consists of proceeding to the place of offence, ascertainment of the facts and circumstances of the case, discovery and arrest of suspected offenders, examination of various persons and the reduction of their statements into writing, search of the place and seizure of things, etc., considered necessary for the trial.

In all these stages, the Code of Criminal Procedure confers wide powers on the police officers to discharge their duties subject to reasonable restrictions. Generally, the police while discharging their duties come into contact with the accused in the following cases: (1) Arrest, (2) Search of place and person, (3) Detention in police lock-
up, (4) Police remand, (5) Examination of witnesses. Of these five situations mentioned above, the Code of Criminal Procedure made special provisions with respect to search of a person and place and examination of accused as witness only. Till the Code of Criminal Procedure was amended in 2005, there were no special provisions to protect the interests of woman under arrest. Even in the case of police lock-up, where there are more chances to the police to commit offences against women as against men.

**Arrest of accused person**

Till Criminal Law Amendment Act 2005, no special provisions were provided to protect the interest of the woman accused and general principles are followed. It was for the first time a new sub section 4 was added to Section 46 of Code of Criminal Procedure this sub section prohibits the arrest of a woman after sunset and before the sunrise except in grievous and unavoidable circumstances. This sub section further says that in exceptional circumstances the woman police officer shall, by making a written report, obtain the prior permission of the judicial magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.
In addition to this sub section (4) in Section 46 a new Section 50-A was inserted by the Criminal Law Amendment Act 2005. This Section imposes an obligation on a person making arrest. He has to inform about the arrest and place where the arrested person is being helped by any one of their friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

An another obligation imposes on the police officer is that he shall inform the arrested person his or her rights under sub-section (1) as soon as he or she is brought to the police station.

Sub-section (4) of the same Section imposes a duty on the magistrate before whom arrested person is produced, to satisfy himself that the requirement of sub-sections (2) and (3) have been complied with respect to such arrested person.

Search of place

The police officer has the power to search a place at the time of arrest. At the time of making a search of any place, an occupier of a house is under a legal duty to afford to the police and to any person acting under a warrant of arrest, all the facilities to search the house
for the purpose of making arrests. If such facilities are denied or obstructions are put in the search, the police officer or any other person executing a warrant shall have power to use force for getting entry into the house for search and also for the purpose of liberating himself in case he is detained in the house.

These powers are subject to reasonable restrictions, that if any such place is an apartment in the actual occupancy of a female such female being a 'pardanashin' woman who live according to their custom, does not appear in public the police officer entering such place shall give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and enter it.

An officer who knowingly violates the requirements of this proviso would be punishable under Section 166 of the Indian Penal Code.

Search of person

The police officer has the power to search an arrested person whenever a person who is arrested cannot legally be admitted to bail or is unable to furnish a bail bond the police officer making the arrest
may search the person, and place in safe custody along with all articles, other than necessary wearing apparel found upon him in the presence of two respectable persons of that locality. A receipt showing the articles so seized shall be given to such a person. Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to her decency.

Further, Section 100(3) of the Code of Criminal Procedure dealing with searches and seizures also makes it obligatory that a woman should be searched by another woman with strict regard to decency.

The words 'with strict regard to decency' in both the Sections suggest that not only should the search of a woman be made by another man but that no male person should be present at such search. But the Supreme Court has taken the view that when a male person saw from some distance something being produced from the person of a woman searched, "the search should not necessarily be illegal nor such evidence may be inadmissible".

Medical examination of accused

Sections 53, 53-A, 54, and 54-A, of Code of Criminal Procedure relate to the examination of the arrested person by a
medical practitioner. The former relates to the examination of an accused person by a medical practitioner at the request of the police officer and the latter to the examination of an arrested person by a medical practitioner at the request of the arrested person.

Section 53 of the Code is intended to remove the lacuna present in the old Code, by reason of which it was not possible to subject an arrested person to medical examination, without 'his / her consent. The Section makes this possible:

"To facilitate effective investigation, provision has been made, authorising an examination of the arrested person by a medical practitioner, if, from the nature of the alleged offence or the circumstances under which it was alleged to have been committed, there is a reasonable ground for believing that an examination of the person will afford evidence."

Section 54 of the Code of Criminal Procedure on the other hand, was inserted on the recommendation of the Joint Parliamentary Committee as follows:

"The Committee considers that a person who is arrested should be given the right to have his body examined by a medical officer when:"

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he is produced before a Magistrate or at any time when he is under custody, with a view to enabling him to establish that the offence with which he is charged was not committed by him or that he was subjected to physical injury. In view of the Committee, a person in custody is in need of this protection".

Thus Section 53 of the Code of Criminal Procedure imposes an obligation upon the arrested person to subject himself or herself to a medical examination at the instance of the police to help the investigation, while Section 54 confers upon the arrested person a right to have himself or herself medically examined to establish his or her innocence, if necessary, or to show that he or she was subjected to injury while in police custody.

Where the person to be examined is a female, the examination must be made only by or under the supervision of a female registered medical officer. A new sub section (2) was inserted in Section 54 by the Amendment Act 2005. This amendment is inserted to provide a copy of the report of the medical examination of the arrested person should be furnished by the registered medical practitioner to the arrested person or the person nominated by such arrested person.
Examination of witnesses

The Code of Criminal Procedure has given powers to police officers to make any person to attend before him for the purpose of investigation. According to Section 160(1) of the Code of Criminal Procedure any police officer making an investigation may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

The proviso of this Section lays an obligation on the police officer with regard to the examination of women witnesses. That is to say, whenever a woman is required to be examined as a witness in connection with a case, she should not be summoned to the police station it has to be recorded at her residence.

Prior to the Amendment Act 26 of 1955 even a child or woman, if so required by the investigating officer was bound to attend at the place of the investigation. After the amendment, if the officer wants to examine a child below 15 years or a woman he must go to their
residence. A lady even if suspected of any crime cannot be called to the police station even for the purpose of investigation and a duty is cast upon the investigating agency to examine her at the place of her residence. The Supreme Court also pointed out that

"There is a public policy, not complimentary to the police personnel, behind this legislative prescription which keeps juveniles and females from police custody except at the former's safe residence".

Apart from the above provision, the Law Commission opined that when a young person below fifteen years or a woman is examined by the police during investigation, a relative or friend of such a male person or a woman or a representative of a recognized organization interested in women and children's welfare should be allowed to be present. This point was also considered by the Law Commission in its Report on Rape and Allied Offences which favoured an amendment of Section 160(1) Code of Criminal Procedure for the purpose.

The court further added that if a police officer acted contrary to the proviso to Section 160(1), such deviation must be visited with
prompt punishment since policemen cannot be a law unto themselves while expecting others to obey the law.

If the provision is violated, and the child or woman is kept under restraint in the police station or any other place of investigation, the investigating officer may be liable to punishment under Sections 341 and 342 of the Indian Penal Code thus, the provision is intended to give special protection to women and children against the probable indignities and inconveniences that might be caused to them by the abuse of power by the police.

It is evident that Code of Criminal Procedure has limited provision for protecting the accused. The amendments made as late as 2005 and 2009 gave more protection to the accused at the time of arrest where it specifically said that women should not be arrested after the sunset and before sunrise. However the latest amendment remained silent on the mode of arrest Section 46(1) specifically says that the police officer making arrest is required to actually touch or confine the body of the person. It even applies to women giving a chance for male officers to misbehave with women while arresting her hence it should be done by the women police only. Similarly there are no special provisions are provided when they are detained in
police lock up, remand etc. This lacuna in the Code has resulted in the high-handed behaviour of the police personnel.

While some of the complaints against the police officials on the treatment of attested persons in remained as mere allegations, the so many cases proved conclusively the brutality of men in uniform. The sexual assault by the custodians of law on the helpless women has touched the collective conscience of the public and the resultant condemnation has forced the Government of India to issue special instructions to the States and Union Territories through the Home Secretary, Government of India in 1980.

The instructions pertain to the arrest of women, search of women suspects, women as under trials, women in custody, etc. They are largely aimed at restraining the police force from its unlawful behaviour. They are

At the time of Arrest

Police officers are vested with wide discretionary powers of arrest under section 41 of Code of Criminal Procedure, according to Section 46(1) of Code of Criminal Procedure, a police officer making an arrest is required to actually touch or confine the body of
the person to be arrested, unless there is a submission to the custody by word or action. In case of women, their submission to the custody should be presumed unless proved otherwise and there should be no occasion for a police officer arresting a woman to touch her person. The Law Commission of India, in its one hundred thirty fifth reports on 'Women in Custody' expressed the same view. The recommendation of the Commission in this regard was to add the following proviso in Section 46(1) of the Code:

"Provided that where a woman is to be arrested, then, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed, and unless the circumstances otherwise require or unless the police officer arresting is a female, the police officer shall not actually touch the person of the woman for making her arrest."

It is also necessary to ensure that except in unavoidable circumstances no woman should be arrested between sunset and sunrise. If one has to be arrested during night, the police officer must obtain prior permission of his immediate superior officer and furnish written reasons thereto. If the circumstances make the arrest imminent, then the justification for making the arrest during night
should be reported to the immediate superior officer without delay. In some States, only police officers of the rank of Assistant Sub-Inspector or above are empowered to effect arrest of women, and also to report all such arrestees to their Sub- Divisional Police Officers or District Superintendents of Police.

In bailable cases, bail should be granted without delay. If the offence is non-bailable the arrested person should be remanded to judicial custody with utmost expedition. While being escorted to jail, a male relative should be permitted to accompany the escort party.

**Detention in police custody**

If for good and valid reasons, an arrested person has to be detained in police custody, it should be ensured that he is kept in a lock-up at the police station, and where a separate lock-up is not provided for females, in such cases she should be kept in a separate room and not in the male lock-up. In addition, a male or female relative of the arrested person should be permitted to stay on the premises of the police station and the place of custody of the arrested person should be within his or her view. If no male or female relative
is available, the services of some local female should be requisitioned and, if necessary, she should be paid for the services.

**Remand to Police custody**

In very exceptional circumstances, the police should ask for the custody of an arrested man on remand. Before any such request is made, a Police Officer must satisfy himself about the grounds and arrangements made for the safety of the arrested person during the course of enquiry. Women police, wherever available, should be utilized for dealing with women accused and, in particular, for searching their person, escorting them to jail, and keeping a watch on them while in the police lock-up.

Along with the constitutional safeguards, the guidelines issued by the Union Government, for the protection of the arrested person were routinely passed on to the police authorities by the State Government, and the police men in uniform have not cared much to abide by them. The continued custodial offences against arrested persons reflect the scant regard shown to the Central Government guidelines by the police force. The existing instructions of the Central
Government are only administrative directions and they have no legal force to protect their rights through court.

If the authorities violate these instructions, the remedy is only administrative but not judiciary i.e., approaching to the higher authorities, but there is no legal remedy. These instructions do not confer enforceable rights on the arrested person. So the Code of Criminal Procedure should suitably be amended to incorporate these special instructions regarding arrests, detention and treatment of accused persons in the lock-ups.

The brutal act of police by Parading Maya Tyagi naked and the subsequent her rape by the police have hit the headlines within three months of the issuance of the guidelines. This followed the now well known petition of the reputed journalist Sheela Barse against the custodial offences by the Bombay city police officers.

While disposing of the petition, the Supreme Court had issued certain directions to the police to follow. They are as under:

1. To keep the police lock-up in good localities where only female suspects should be kept and they should be guarded by female constables only.
2. The female suspects should not be kept in a lock-up in which male suspects are detained.

3. The interrogation of female suspects should be carried out only in the presence of female police officers and female constables.

4. The Magistrate before whom the arrested person is produced should enquire that person whether he or she was tortured or maltreated in the police lockup by the police. He should also inform the right to be medically examined and bail procedure. In spite of the instructions of the Government of India and directions of the Supreme Court, the crimes against the arrested person in police custody are on the rise.

Recommendations of National Expert Committee

The National Expert Committee on Women Prisoners headed by Justice Krishna Iyer made the following suggestions in its report in the year 1987 under sub-heading women and the police, with a view to protect the dignity of arrested person under the State care and custody.

1. Taking note of the special role of the women in the family, the greater probability of her being available for assisting the
criminal process, the potential for abuse of her person in custody, and the lesser threat posed by her to the security of the society, it shall be the policy of the State including the police to avoid the arrest and detention of females excepting when there are special reasons recorded in writing to disregard this policy in specific situations.

2. Whenever arrest is to be made, women's submission to custody shall be presumed unless proved otherwise; there should be no occasion for a male police officer arresting a woman to touch her person.

3. Except in unavoidable circumstances, no woman needs to be arrested between sunset and sunrise.

4. Only officers of and above the rank of Assistant Sub-Inspector should effect the arrest a woman.

5. In all cases of bailable offences, bail on her bond shall be granted forthwith by the police themselves.

6. As far as possible, in non-bailable cases also, bail should be granted unless special circumstances warrant a different course, in which case, the arrested woman shall be remanded to judicial
custody with utmost expedition.

7. Such custody shall only be in a separate police lock up for women and, where such facility is not available, in a special home or institution designated under any law for the time being in force to receive women. At no time shall a woman arrestee be left unguarded by a woman guard or surrogate.

8. In all places of police custody, basic amenities such as living space, water, toilet, food, medical examination and care, and provisions to meet the special needs of women shall be provided.

9. The State shall, as soon as may be, draw up a charter of minimum standards of treatment, including amenities which shall obtain in police custody for custodial inmates as well as staff. The standards shall also spell out the rights and duties of inmates and staff, and shall serve as a manual of instructions and be enforceable in the manner indicated.

10. When arresting a woman, proper arrangements for the protection and care of her children shall be the responsibility of the State. Children who need to be custodialised jointly with their mothers shall enjoy rights justly needed, while in custody, in terms of
food, living space, health, clothing and visitation.

11. The person of a woman shall not be searched except by a woman duly authorized by law, and in a manner strictly in accordance with the requirements of decency. Whether in custody or in transit, the arrested woman must always be guarded by a woman police or a female surrogate. While escorting, a relative may be permitted accompany the female arrestee.

12. Whenever a woman is to be examined by the police or other investigative agency as a witness, it should not be done only at her residence; nor should she be summoned to the police or investigative station unless she expresses her preference to be examined in the station.

13. Before taking a woman into custody, the police shall record the fact in relevant records and responsible officers shall ensure that 'detention' without making formal entries is strictly avoided.

14. All senior police officers visiting police stations in their official rounds must as a working rule, enquire personally into the conditions of the woman taken into custody and check the promptness with which entries are made, information forwarded, grounds of arrest furnished to the accused, etc. The result of the
enquiry must be recorded by the officers.

15. Information on women in custody should be made available to recognized social organizations and individuals on request. Persons and institutions accredited as visitors should be allowed, as of right, free access to police stations and records.

16. Whenever a woman is arrested by the police without warrant, she must be immediately informed of the grounds of arrest and the right of bail.

17. In exceptional circumstances when a woman arrestee is taken to a police lock-up, the police should immediately give intimation to the nearest Legal Aid Committee or recognized legal services body which must render all necessary legal services at State expense.

18. On arrest, the police should immediately obtain from the arrestee the name of a relative or friend to whom the intimation of her arrest should be promptly given.

19. A substantial increase shall be affected in the woman component of the police force at all levels and adequate training given.

20. In endemic female crime areas, or wherever otherwise desirable,
exclusive police stations, or booths and counter within police stations, shall be set up to deal with women needing protection of, or coming in conflict with, law. Such booths and police stations shall be managed by an integrated cadre of men and women police specially trained and sensitized to deal with women.

21. Crime and arrest data gathered by the police should maintain separate streams of information on men and women. Sex-wise data should be compulsorily compiled and displayed in all police stations and reflected in all reports on crime, arrest and disposal.

22. Any violation or deviation or action on the part of any officer which defeats the policy of the above provisions shall be punished after due enquiry by a Judicial Magistrate of the first class. The nature and quantum of the punishment shall be decided by the Sessions Judge having the requisite jurisdiction. An appeal to the High Court shall be available for any aggrieved party.

23. Where the wrong is proved/ the wrong-doer and, whether proved or not, the State shall make fair reparation to the victim to be determined by the sessions judge.
Recommendations of National Commission for Women

The recommendations made by the Expert Committee remained as mere recommendations since the Government failed to take any follow-up action as pointed out by Smt Jayanti Patnaik, the then Chairperson, and National Commission for Women. The National Commission for Women made the following suggestions in 1993 to the Ministry of Home Affairs after their deliberations on "Custodial Justice for Women" held at New Delhi in February 1993. The relevant suggestions include:

Arrest of women, search, bail, etc.

1. Women shall not be arrested between sunset and sun rise and shall not be arrested except in the presence of women.

2. In all cases of bailable offences, bail on her bond shall be granted forthwith by the police themselves. As far as possible, in non-bailable cases also, bail should be granted unless special circumstances warrant a different course, in which case, the arrested women shall be remanded to judicial custody with utmost expedition.

3. On arrest, the police should immediately obtain from the
arrestee the name of a relative or friend to whom the intimation of her arrest should be promptly given.

4. If considerations of arrestee's own safety and freedom from ensnarement by anti-social elements demand detention in public institutions, bail shall be refused to the women in her own interest, unless she specifically states her willingness to be thus released even after being alerted to the above considerations.

5. The person of women shall not be searched except by a woman duly authorized by law, and in a manner strictly in accordance with the requirements of decency. Whether in custody or in transit, the arrested woman must always be guarded by a woman police or a female surrogate. While escorting, a relative may be permitted to accompany the female arrestee.

6. Whenever a woman is to be examined by the police or other investigative agency as a witness, it should be done only at her residence. Nor should she be summoned to the police or investigative station unless she expresses her preference to be examined in the station.
Exclusive custody for women

1. Police stations serving women only and exclusive lock ups under the control of women police and like provision in women's jails should be made. This will necessitate amendment of prisons Act and Police Act.

2. Separated space for female arrestees in every police lock-up and complete segregation of women prisoners in jail and other custody should be maintained.

3. Such custody shall only be in a separate police lock up for women and, where such facility is not available, in a special home or institution designated under any law for the time being in force to receive women. At no time shall a woman arrestee be left unguarded by a woman guard or surrogate.

4. In all places of police custody basic amenities such as living space, water, toilet, food, medical examination and care, and provisions to meet the special needs of women shall be provided.
At the time of trial procedure

Criminal cases have to make a long journey of investigation, enquiry, trial, etc. Thus the procedural law consists of hundreds of provisions relating to enquiry, trial etc., to determine the guilt or innocence of the under trial prisoner. Unfortunately, the Code of Criminal Procedure is silent in giving protection to women prisoners in judicial custody except in certain conditions.

Bail Procedure

In case of bailable offences the accused is entitled to bail as a matter of right if he or she is prepared to give bail bond. If the police officer and the court thinks that the arrested person is indigent and is unable to furnish surety, instead of taking bail from such person, discharge him or her on executing a bond without sureties for his or her appearance in court at the time of trial.

Further explanation says that when a person is unable to give bail within a week from the date of his arrest, it shall be sufficient ground for the officer or the court to presume that he or she is an indigent person and can be released on self bond.
A person who is accused of an offence has to remain in jail for his or her inability to furnish bail. Therefore Section 436 (1) is amended to make a mandatory provision that if the arrested person is accused of bailable offence and is an indigent person and cannot furnish surety, the court shall release person on his or her execution of a self bond.

There had been instances where undertrial prisoners were detained in jail for periods beyond the maximum period of imprisonment provided for the alleged offence if proved. Therefore a new Section 436-A is being inserted in the code to provide that where an undertrial prisoner other than the one accused of an offence for which death has been prescribed as one of the punishment, has been under detention for a period extending to one-half of the maximum period of imprisonment provided for the alleged offence, than such person should be released on his or her personal bond, with or without sureties. It is also proposed to provide that in no case will an undertrial prisoner be detained beyond the maximum period of sentence for which he or she can be convicted for the alleged offence.

But in case of non-bailable offences, it is a discretionary power vested on the officer-in-charge of police station and on court, in non-
bailable offences a distinction is made between offences punishable with death or imprisonment for life and other offences.

Section 437(1) of the Code of Criminal Procedure says that the accused shall not be released on bail, if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life. However, the court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail, after recording its reasons in writing for doing so.

There is no direct authority of the Supreme Court on this issue, whether the word 'may' has to be read as "shall". But the Supreme Court has made some observations in Gurucharan Singh v. State of Punjab.¹

"In other non-bailable cases, the court will exercise its judicial discretion in favour of granting bail subject to sub-section (3) of Section 437, Code of Criminal Procedure, if it deems necessary to act upon it, unless exceptional circumstances are brought to the notice of

¹. 2003 Cr.LJ (SC) 3764.
the court which may defeat proper investigation and a fair trial, the court will not decline to grant bail to person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however to the first proviso to Section 437 (I) of Code of Criminal Procedure and in case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will however be an extraordinary occasion since there will be some material at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence". So far as the High Courts are concerned there is controversy regarding the interpretation of the word 'May' in the first proviso to Section 437 of the Code of Criminal Procedure.

Some of the High Courts expressed the word 'may' is only directory and not mandatory and held that bail cannot be granted only on the ground that accused is a woman. Some other High Courts took the contrary view that the word 'may' used in the proviso means "shall" and hence it is mandatory and held that a woman is entitled to
release on bail. The word "may" has been interpreted by the honourable Supreme Court as follows:

"There is no doubt that the word "may" generally does not mean "must" or "shall" but it is well settled that word "may" is capable of meaning of "must" or "shall" in the light of the context. It is also clear that where discretion is conferred upon a public authority coupled with an obligation the word "may" which denotes direction should be construed to mean a command. Sometimes a legislature uses that word "may" out of deference to the high status of authority on whom power and obligation are intended to be conferred".

For instance, the words 'may take cognizance' under Section 190(l) (b) of the Code of Criminal Procedure, are to be read as "must take cognizance" i.e., the magistrate is bound to take cognizance of any cognizable offence brought to his notice. Thus he has no discretion in this case because it is violative of Article 14 of the Indian Constitution.

According to the interpretations of the Supreme Court and some of the High Courts, especially Rajasthan High Court, the word
"may" in proviso first of Section 437 Code of Criminal Procedure has to be read as "must" or "shall". Thus this proviso being mandatory, the court is under obligation to release the accused persons including women on bail.

Keeping in view, the status of women in India, this proviso was inserted under Section 437 Code of Criminal Procedure to avoid women being kept in custody as far as possible.

It is an obligation on the part of the court to interpret the law as it is and release the accused on bail liberally even if there are reasonable grounds to believe that he has been guilty of an offence punishable with death or imprisonment for life. It is an established and cardinal principle of criminal jurisprudence that in all criminal proceedings, the evidence against the accused should be recorded in his or her presence and in an open court so that the accused will have an opportunity to challenge the evidence and can defend his or her case. But in certain cases, the court may dispense with the personal attendance of the accused and permit him or her to appear through a pleader. The following are the relevant provisions under Code of Criminal Procedure Section 205 and 273 provides exemption of an
accused from personal attendance before the court. Section 205(1) of the Code reads.

Whenever a Magistrate issues a summons he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

Section 273 reads thus:

Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceedings shall be taken in the presence of the accused, or when his personal attendance is dispensed with, in the presence of his pleader.

Both Sections provide for the exemption of the accused from personal attendance, but they refer to different stages of the proceedings. Thus Section 205(1) deals with the initial appearance of the accused person before the Magistrate who issues summons, while Section 273 deals with the presence of the accused person at the trial and empowers the presiding officer, whether he is a Magistrate, Sessions Judge or Judge of the High Court to dispense with the personal attendance of the accused at the trial.
The use of the expression "if he sees reason so to do" clearly indicates that the power conferred by Section 205(1) is discretionary and no hard and fast rule can be laid down, as to the manner in which it is to be exercised. It has to be considered after giving due consideration to the attendant circumstances. No sweeping generalizations can be made. The court should be generous in exempting accused persons from personal appearance. Such appearance is the rule in criminal cases of a serious nature, involving moral turpitude and punishable with imprisonment for some length of time. The courts should consider the nature, of the aberration alleged, prima facie material for acceptance of such allegation, the possibility of malafide allegation and prejudice if any likely to be caused if personal attendance is not made. The courts have to weigh the inconvenience likely to be caused to an accused if he is required to be absent from his vocation, profession, trade, occupation and calling for attendance in court, against the prejudice likely to be caused if he does not appear in court. Whenever personal attendance is insisted upon, there is indubitably some harassment, to me accused and the courts have to see that this harassment is not out of proportion to the seriousness of the allegation, the severity of possible punishment on
conviction and the nature of allegations as they stand out prima facie.
Court is expected to exercise its discretion after considering
comprehensively all the details. Courts should normally dispense with
the personal appearance when it concerns a pardanashin woman,
highly placed public functionary and the like.

In Tilotama Kar v. Ranjitarani Satpathy,\(^1\) case, the Orissa High
Court held that "although there is no exception in law that merely
because an accused is a pardanashin woman, discretion must be
exercised in her favour, yet it should be reasonably exercised in
consideration of habits and customs of the country and the prejudice
caused to a woman when she is required to attend any court regularly.
In a conservative society normally such appearances are looked
down. Public appearance of women still continues to be a taboo in a
conservative society. The mere fact that an accused is a pardanashin
lady does not entitle her to remain exempted all the time even if her
presence is required for proper conduct of the case. As a matter of
right, exemption from personal appearance cannot be claimed.

\(^1\)1998 Crl.13268 Ori.
While dealing with an application for dispensing with the personal attendance the court should not take too technical or stringent a view. The approach should be to see whether personal appearance is absolutely necessary for the purpose of the case?

In Kaveri v. State\textsuperscript{1}, the facts of the case were that two ladies were shown as absconders in the charge sheet and it was pleaded that as they were pardinashin ladies, they should be exempted from personal attendance and the fact that the accused were married women and residing with their respective-in-laws, there was no scope of their absconding or fleeing from justice. Taking these factors into consideration, the Orissa High Court dispensed with the personal appearance of the accused petitioners.

The Karnataka High Court in Shakuntala v. Virupanna\textsuperscript{2}, after referring to the relevant provisions of law and of the High Court of Guwahati made it abundantly clear that the criminal courts should not be unduly strict and harsh in the matter of securing personal attendance of the women accused in a criminal proceeding against

\textsuperscript{1} 1997 Cr.I. 1327.
\textsuperscript{2} 1996 Cr.I. 2954 Kar.
them and that they should normally adopt a liberal and humane approach in the matter of granting them exemption from personal attendance, when so requested by an advocate. This duty on the part of the learned trial judges gains all the more importance considering the social milieu and ethos peculiar to the Indian society. While dealing with an application of any woman accused for her exemption from personal attendance in a criminal trial against her, the criminal courts must keep themselves informed of the religious and cultural susceptibilities, gender susceptibilities such as the sense of shame, modesty and stigma with which a woman accused of a crime would usually be overtaken during her trial in a criminal court, and the social and religious customs and practices of the particular community to which a woman accused belongs, placing constraints on her public appearance.

From the above account, it is clear that women need to be treated differently among men though there is no such distinction in the term 'accused'. The personal appearance of the accused, involved in non-serious cases, may be done away with. The very atmosphere of the court itself, where a large number of under trials and other accused are gathered, is a punishment for the accused to become a
part of that group. Waiting for hours, turn from morning to evening keeps them away from house and children. The social stigma attached to the accused is also unbearable. The insistence to appear before court in all hearings and at every stage of the trial is an avoidable harassment to the accused.

Therefore, it is suggested that a new provision may be inserted in Section 205 and also in other parts of Code of Criminal Procedure so that the presence of the accused, may be dispensed with at the trial. Depending on the severity of the offence and the need for their presence the accused may still be summoned.

Release on probation

Section 360(1) of the Code of Criminal Procedure comprises two classes of cases -

1. Sub-section (1) relates to release on probation of good conduct on bond, and

2. Sub-section (3) relates to release on or after admonition.

The conditions laid down in sub-sect. (1) for release on probation are:

(a) That the accused is either -
(i) a person of 21 years or above, convicted of an offence punishable with fine only or imprisonment for 7 years or less;

or

(ii) A person under 21 years or a woman convicted of an offence which is not punishable with death or imprisonment for life;

(b) That no previous conviction has been proved against the accused;

(c) the court convicting him or her considers that having regard to the age, character or antecedents of the offender and the circumstances in which the offence was committed, it is expedient that the offender should be released on probation of good conduct, instead of sentencing him at once to any punishment.

Then the court, whether trial court, appellate court or the High Court or Court of Session when exercising its powers of revision, may deal leniently with a person who has committed an offence for the first time by releasing him on probation of good conduct instead of awarding him punishment so as to give a chance to the offender to reform himself and to protect him from becoming a regular criminal by association with hardened criminals in prisons. Sub-section (1) of
Section 360 of the Code of Criminal Procedure, lays down that even in the case of any person under 21 years of age or any woman, as in the instant case, the conviction should be of an offence not punishable with death, or imprisonment for life, meaning thereby, that in case they are convicted of the offences which are punishable with death or imprisonment for life the provisions of Section 360 of the Code of Criminal Procedure, would not come into operation and as such the court has no power whatsoever to release such a person on probation.

Any accused who commit offences which are not punishable with death or life imprisonment and first offenders must be released on probation instead of putting them behind bars.

**Death sentence on pregnant woman**

When any person is sentenced to death by a Court of Session, the sentence shall not be executed unless it is confirmed by the High Court as laid down in section 366 of Code of Criminal Procedure. When the sentence is confirmed by the High Court, the Court of Session shall issue a warrant to the Superintendent of the prison in which the prisoner is confined to execute the sentence to be carried into effect. If a woman sentenced to death is found to be pregnant, the
High Court shall order the execution of the sentence to be postponed and may, if it thinks fit, commute the sentence to imprisonment for life.

In State of Tamil Nadu v. Nalini\(^1\), in respect of the assassination of Rajiv Gandhi, the former Prime Minister of India, all the 26 accused had been sentenced to death by the trial judge. The Supreme Court finally confirmed the conviction only on six accused. Of the six persons convicted of the murder, the death sentence was imposed only on four accused and one of them is Nalini. Because Nalini is a woman and a mother of the child who was born while she was in custody, K.T. Thomas J. felt that the death penalty should be converted to life sentence.

According to him, the following were the relevant considerations in the case of Nalini:

"Another consideration which we find difficult to overlook is - she is the mother of a little female child who would not have even experienced maternal huddling as that little one was born in 1.1993 LW (Crl.) 606."
captivity. Of course, the maxim 'justicia non novit patrem nee matrem' (justice knows neither father nor mother) is a pristine doctrine. But it can not be allowed to reign with its rigor in the sphere of sentence determination. As we have confirmed the death sentence passed on father of that small child, an effort to save its mother from gallows may not militate against 'jus gladii' so that an innocent child can be saved from orphan hood.

But Wadhwa and Quadri JJ who confirmed the death sentence felt from the facts that "the participation of Nalini was not the result of helplessness but a well-designed action with her free will to make her part of the contribution to the unholy plan and wicked conspiracy."

However, the Governor of Tamil Nadu State commuted the death penalty against Nalini to life sentence for reasons similar to those given by Thomas J.

Thus one question that arises often in relation to pregnant women and mother-and-baby units is whether this class of women should ever be given custodial sentences. One supporter of this point
of view is James Anderson, Governor of a British Prison. In a memorandum to the Prison Department he argued:

"It seems to me that a mother giving birth to a baby should always be given an opportunity to make a fresh start and that a caring and compassionate society should, if anything, err on the side of leniency. I doubt very much whether the community would be exposed to any undue risk and if we are serious about reducing sentence length I suggest a humane start could be made in this direction.

The Chairman of the National Expert Committee also agreed with this view and expressed his opinion that the option must be given to the woman to go into or out of prison after explaining to her the advantages and disadvantages. Further, he opined that once the nutrition and medical attention is strengthened for expectant mothers and mothers and babies inside prison, they have a better chance in a well-run jail than if they are back home where medical neglect, inaccessibility to hospitals, nutritional illiteracy and general poverty imperil both mother and baby.
It is submitted that instead of giving an option to women to go into or out of prison, it is better to provide necessary medical assistance and nutritious food for both mother and baby.

Other critics have frowned upon remanding in custody pregnant women and mothers of young babies. Some of them give birth while in custody and may eventually be released as innocent.

Judges and Magistrates require a thorough sensitization and orientation for handling judicial proceedings relating to women. The judiciary while passing a sentence should understand the responsibility of a woman towards her children. Hence, a lenient view has to be taken in case of women offenders who are mothers or pregnant women. A statutory amendment is to be made keeping in view the welfare of the newly born baby or infant child. Whenever a woman sentenced to death is found to be pregnant instead of postponing the death sentence on her, it should be commuted to life imprisonment. An amendment in Code of Criminal Procedure is needed for this purpose, keeping in view the welfare of the child.
Recommendations of National Expert Committee

- The Expert Committee on women prisoners has taken into consideration all the observations made by the judiciary in various cases involving women and finally came out with the following recommendations under the sub-heading women and judiciary.

1. In protecting the rights of the women in the criminal justice process from arrest through release, the judiciary has special responsibility to ensure that the principles and purposes of this Code are implemented. Judicial officers shall always respond to the distressed call of women in custody irrespective of their jurisdiction or status in the judicial hierarchy.

2. When produced before the Magistrate, he or she shall invariably ask the woman of the treatment given to her by the police and of any other special problems she encounters in her situation. Every effort shall be made to resolve those special difficulties and in cases where an immediate solution is not possible within the law, the Magistrate may explain the position to her and initiate appropriate action for redress.

3. Except in extreme situations when detention is desired, the
Magistrate shall release the woman on her own bond, the conditions of which shall be explained to her by the Magistrate.

4. No judicial remand of women will be allowed except in those institutions which are completely under the control of women officials.

5. If considerations of arrestee's own safety and freedom from ensnarement by anti-social elements demand detention in public institutions, bail shall be refused to the woman in her own interest, unless she specifically states her willingness to be thus released even after being alerted to the above considerations.

6. In the disposition of women to custody or otherwise the Magistrate must enquire and direct that suitable arrangements for the welfare of her children be made in a manner that protects the rights of children.

7. Speedy trial of all cases involving women is a legal and moral requirement. All magistrates shall proceed with such trials with utmost expedition, with due regard to the principle of limitation where applicable. Special tribunals and procedures to carry out this directive shall be organized by Government in consultation with the High Court.
8. To the extent possible, the State shall set up Womens Courts to try women offenders. Where joint trial with man is involved, the courts may use their discretionary power whether to hold joint or separate hearings.

9. Right to legal aid in criminal proceedings is a fundamental right. In the case of women, free legal aid shall be given from the time of arrest and the Magistrate shall ensure that adequate legal services are provided.

10. Magistrate shall inform women, when first produced, of their right to legal aid at State expense and direct the provision of necessary services. They shall also explain the nature and scope of the proceedings against her and her rights in it.

11. When women are examined in court as accused or as witnesses, due courtesy and decency shall be shown. If circumstances so demand in the interest of modesty and privacy of women, the trial may be held in camera or the woman may be examined on commission through women advocates.

12. Long cross-examinations and repeated examinations may be avoided in the case of women and, if necessary, information
may be sought by affidavit or interrogatories.

13. Representation of women at all levels in the judiciary is essential to promote gender justice and women may be appointed in adequate numbers, among others, for processing cases involving women.

14. In courts processing cases involving women, the court staff should consist of sufficient numbers of women employees in order to avoid personal difficulties which women accused or women witnesses may face with the male dominated institutions and cadres.

15. Sentences and sentencing in respect of women offenders may have to take note of the solidarity of the family and the woman's unique role and needs. Except when unavoidable, custodialization shall not be resorted to. Community based treatment of women being ideal for them, their children and society, it is desirable to prefer such disposition.

16. While sentencing women to imprisonment or any form of custodialization, suitable arrangements should be made for the custody and welfare of their children.
17. Courts will take continuing interest in the welfare of women in custody and ensure that they receive proper treatment, including psychiatric and rehabilitative services.

18. Magistrates shall make frequent visits to jails and custodial institutions within their jurisdiction and shall file periodic reports to the superior judicial officers on the status and condition of women in such institutions.

19. In case of women in custody for long periods, premature release by reducing the sentence by courts may be considered. Parole, furlough and other forms of supervised release may be widely resorted to.

20. Short term sentences of less than six months may be totally avoided in case of women. Similarly simple imprisonment which is demoralizing and wasteful shall be avoided.

21. Where, owing to small numbers, the woman's custodialization amounts to solitary confinement, the court shall move for her immediate release unconditionally, or on probation or parole as may be deemed fit.

22. In the disposition of women offenders, courts should
mandatorily call for and give due regard to the probation officer's report and to the report of medical examination. Where probation officers are not available, probation investigation should be entrusted to recognized and accredited institutions and individuals.

23. Women, unless economically independent, shall not be sentenced to fine and alternatives such as admonition, conditional discharge, probation under supervision, etc., should be resorted to.

24. The courts shall not sentence any mentally sick woman or retardates to prison and shall ensure the immediate transfer of any existing cases of non-criminal and criminal lunatics to mental homes for therapeutic and rehabilitative care.

25. Insufficient escorting staff or facilities shall not be used as grounds for postponing the hearing or disposition of women. Whenever necessary, surrogate escorts should be used. In addition, the State Government through the Social Welfare Department should develop an escort corps to serve the escorting requirements of female inmates in various custodial situations.
Recommendations of National Commission for Women

Further, the National Commission for Women also contributed their bit for custodial justice of women by making the following recommendations to be implemented by the Ministry of Home, Government of India.

1. When women are examined in court as accused or as witnesses, due courtesy and decency shall be shown as the circumstances so demand; and in the interest of modesty and privacy of women, the trial may be held in camera or the women may be examined on commission through women advocates.

2. In the disposition of women offenders, courts should mandatorily call for and give due regard to the probation officer's report and to the report of medical examination. Where probation officers are not available, probation investigation should be entrusted to recognized institutions and individuals.

3. Right to legal aid in criminal proceedings is a fundamental right. Free legal aid shall be given from the time of arrest and Magistrate shall ensure that legal services are provided.

4. Magistrate shall inform accused, when first produced, of their
right to legal aid at State expense and direct the provision of necessary services. They shall also explain the nature and scope of the proceedings against her and her rights in it.

5. The disposition of women to custody or otherwise the Magistrate must enquire and direct that suitable arrangements for the welfare of her children be made in a manner that protects the rights of children.

The National Expert Committee for Women Prisoners, 1987 made elaborate recommendations regarding the protection of women in police and judicial custody. The National Commission for Women has also made its own recommendations in 1993 on the same subject. These recommendations made by those bodies are more or less the same and repetitive in their content. Despite all these well meaning recommendations whose implementation may not cause any extra expenditure, the executive sadly remained silent. This shows the lack of concern on the part of the executive towards the helpless women in custody.

The Indian Penal Code and Criminal Procedure Code contain several hundreds of provisions dealing with several aspects of the
crime and administration of justice. However the provisions which are exclusively made for women are so negligible that they can be counted on one's fingers. As such, the custodial justice for women is a far cry, resulting in crime against women in the custody. Lack of protective provisions for the women in custody, in particular police custody, has started drawing the attention of the public in the early eighties.

The concerted efforts of the academicians, public spirited activists and the judiciary resulted only in the amendment of rape laws in Indian Penal Code and inclusion of relevant provisions in Criminal Procedure Code and Indian Evidence Act. The state and the Supreme Court have also independently issued separate instructions and directions to curb the menace of custodial offences in police stations.