CHAPTER X
Women Prospective

Gods bless those families where women are happy and well treated. ...Swami Vivekananda..Vol.5 Pg.26

In the ancient days of Indian civilization there were no special protection provisions for women, at present in India there are nearly 150 enactments which are exclusively made to protect the rights of women from cradle to grave of different stages in their life time. Like in India in the international fora also there are many Conventions and Declarations dealing with the protection of rights of women. The Universal Declaration of Human rights of United Nations, 1948 is the first instrument which provides for preventing the arbitrary arrest, the presumption of innocence till proved guilty, the right to free and public hearing etc. The prevention of torture, inhuman or degrading treatment and punishment of any person in accordance with the law are the highlights of the European Convention on Human Rights, 1950. The protection of religious beliefs of the prisoners, separation of the male and female prisoners formed part of “The Standard Minimum Rules for the Treatment of prisoners, 1955”.

386
The international Covenant on Civil and Political Rights, 1966 guaranteed legal assistance, bail provision, fair and prompt trial etc along with protection of women in civil cases. The serious issue of torture of the prisoners in prisons was dealt with through the Declaration of Protection from Torture, 1975 and the Convention against Torture of Prisoners, 1944 these two declarations applies to both male and female prisoners. The protection of prisoners was strengthened by the United Nations Organisations General Assembly in 1988 with the adoption of principles for protecting all persons under any form of detention or imprisonment. The principles include the employment of women to search women prisoners and women police officials to supervise the women prisoners both in police custody and judicial custody. All these Declarations and Conventions have an impact on the municipal laws of all the civilized countries which have started recognising the importance of the reformatory aspect of punishment and treating both men and women prisoners as human beings.

Constitutional Protection to Women Prisoners

The Indian Constitution is in consonance with the international opinion and incorporated relevant provisions in its part III and part IV
such as the right to Equality under Article 14, the Right to Freedom under Article 19, the Doctrine of ex-post facto-laws under Article 20(1), the Doctrine of double jeopardy under Article 20(2), the Rule against self-incrimination under Article 20(3), the Right to life and personal liberty under Article 21, the Right to fair trial under Article 22(1), and the rights of detenues under Article 22 (4) to (7) and Free and fair legal aid of her own choice at state expanses to the poor and needy prisoners under Article 39A.

Article 15(3) permits the State to make special provisions for the advancement of women and children and the same applies to the convicted women prisoners also. Equality of opportunities for all and prohibition of discrimination against women Article 16, Prohibition of traffic in human beings Article 23, equal pay for equal work Article 39, facility for maternity relief and benifites Article 42, uniform civil code throughout the India Article 44, free legal aid Article 39A, prevention of practices derogatory to the dignity of the women Article 59A (e) are some other important provisions in favour of the women in all kinds custody.

There are no special safe guards to protect the interests of the women prisoners when they are in the prison custody under a
sentence. The only rights available to the women prisoners are general they have no special rights. The women prisoners by their very status of gender need special treatment which was totally ignored by the framers of the Constitution. However, the interests of the women prisoners can be protected through Article15 (3) of the Constitution to some extent, since it permits the State to make special provisions in the existing laws or to make new laws for the benefit of women and children. Laws protecting the interests of the women prisoners in various custodies have to be made to enforce and protect the rights of women prisoners.

The Rights of Women Prisoners in Prison custody

The women prisoners are subjected to inhuman treatment by physical abuse both in police custody and judicial custody. Custodial violence involving rape and molestation is on increasing threshold, in almost all the states of the country. The Rameeza Bee and Shakila cases in Andhra Pradesh, the rape of Adiavsi women in Madhya Pradesh, the Mayatyagi case in Uttar Pradesh, the Mathura case in Maharastra highlighted the custodial violence against women in police custody. The state violence and incapability of the law to punish the police officers and in protecting the women accused in police custody
was curtailed to some extent by the first criminal law amendment popularly known as anti rape law. Section 376 of I.P.C. was amended in 1983 by revision of the existing laws and inserting new provisions. Thus the in charge of prison custody of women is made responsible not only for the safe custody of women inmates but also any sexual abuse not amounting to rape, to rape or any other kind of misbehaviour committed against women in custody.

The custodial victim also has her right to privacy in the prisons also, no one is permitted to outrage the modesty of women by taking advantage of his official capacity for that, the Cr.P.C was amended to protect the rape victims from the media. The printing and publishing of the trial proceedings are prohibited unless the court permitted to do so. The privacy of women is given prominence irrespective of character of the women victim.

The objective of C.P.C is to provide a uniform procedure to enforce the criminal law. But special protection was given to the women accused. The Cr.P.C surprisingly does not provide sufficient safeguards to protect the interests of the any arrested person including women under arrest. The Cr.P.C is unfortunately did not provide any specific provision on the violence in police lock-up, it was a plase
where the fundamental rights and human rights are brutally violating and causes more chances for the police to commit lock-up deaths and sexual offences against the women accused.

Section 53 of Code of Criminal Procedure imposes an obligation upon the arrested person to undergo a medical examination and in the case of females it should be by a female medical officer. Section 54 of the Code of Criminal Procedure impose an another obligation on the police officer not to summon either a woman or a child below the age of 15 years to the police station, even when they are suspected of an offence. A duty is cast on the police officer to examine them at the residence of the suspect along with a women police officer but it was not following in practice they are bringing the suspects to the police station and using brutal force against the innocent accused even after the Supreme Court guidelines in D.K. Basu Vs State of West Bengal¹.

The police are the chief law enforcing officers of the government police force is entrusted with the fundamental duty of safe guarding the lives and property of citizens.

¹AIR 1997 SC 610.
But it is a universal phenomenon that the police have been in derogation with law, which are contrary to the fundamental duties of the police force. Their acts of oppression or suppression of the weak public, use of third degree methods to obtain confession, torture in the custody are reported in the country in regular frequency. It is pity to say that, the persons those who are appointed to enforce the law are seriously violating the law.

There are so many incidents of custodial offence, especially like custodial deaths and custodial rapes against women by the police in police stations, which led to the judicial enquiries in the country. Despite the are stringent condemnations by the High Courts and Supreme Court and the conviction of such offending police officials with severe punishment, such incidents are in continue.

To curtail this the expert committee appointed by the government of India made several recommendations. Besides existing rules and the existing provisions aimed at protecting the interests of the women accused in custody, an exclusive sections were added to protect the women accused in the police custody. The illegal arrest of women is restricted to the day time and also the
insistence on the presence of a woman police both at the time of arrest is also at the time of interrogation are now part of the law of the country.

But all the protective provisions are more ignored by the police. The treatment meted out to the women accused lodged in different prisons of Andhra Pradesh was reveals through different surveys. The lower the level of the police in the hierarchy, the more the objectionable behaviour with the women accused at the time of their arrest and in the custody.

Based on the answers given by the female prisoners to the researcher, the following are the findings on the experiences of the women prisoners in prison custody.

At the time of arrest, the police officers are in continue to arrest the women during night also irrespective of the gravity of the alleged offence committed by them. The women were brought to police stations in the night hours and late night hours also, though it was prohibited by the law. The women were wrong handled by the male police. The women, on arrest were neither informed of the fact of arrest nor briefed on how long they would be away, where
they would be held or the constitutional rights available to them for bail and free legal aid etc., in the custody. The information of their arrest was not communicated to their family members or friends and they were not allowed to talk with their family members or friends the entire procedure followed by the police pre arrest and post arrest is against the law. The women were neither permitted to bring their younger children with them nor were aided in making suitable arrangements for them at the time of the arrest. From the account of the prisoners, it is clear that the search of the woman arrestee was made with least regard to the decency and respect to the legal provisions.

The most fearful part of the custody is the interrogation by the police without the permission of the court and this is of special concern in the Indian context. The suspects were subjected to merciless beatings with lathis and ironrods. Many were kicked, punched and trampled on the ground. The use of abusive and vulgar language is quite common phenomenon. The women were threatened with sexual abuse. The presence of the women police, which is mandatory, was not following.
Many police stations suffer from the absence of proper physical facilities. There are no separate women enclosures or lock-ups. The arrested females were kept either in the hall or verandah of the police stations. Separate toilets for women in custody are not in existence in the police stations.

Medical facility is not available. Permission to contact friends, relatives or lawyer is not given by the police. Except in a few police stations in cities in Andhra Pradesh, no women constables were seen while women were held in custody. The police stations where women constables made their appearance during day time are also not many. Though the women are entitled to the bail immediately, in case of bailable offences, the police have never informed them about the available legal provisions.

No arrested woman was produced before the Magistrate within the stipulated period of 24 hours. The illegal detention ranged from a minimum of 48 hours to a maximum. It appears that illegal detention period is directly proportional to the time the arrestee took to confess the crime. Those who confessed to the crime immediately after arrest are produced within 24 hours as required under the law.
The Indian Penal Code and Code of Criminal Procedure contain several hundreds of provisions dealing with several aspects of the crime and administration of criminal justice. But the provisions which exclusively deal with the protection of the interests of the women in police custody are negligible and they can be counted on fingers. As such, the custodial justice for women is a far away, resulting in crime against the women in the custody. Lack of protective homes for the women in police custody resulted in the continued violence against the women by the custodians.

**Women In Judicial Custody**

'Justice delayed is justice denied' is a well known proverb. But this proverb is not provoking the judiciary in dealing with the disposal of cases. The judges are required to administer justice not only in accordance with the law but also expeditiously. But in practice, the long unexplained delay of the criminal justice system is taking years altogether before one got the final word from the Apex Court.

There were attempts to reform this judicial system through many recommendations by Expert Committees and by the Apex Court itself. There were many recommendations made and
guidelines laid down, for reasonable and prompt administration of justice should be rooted in confidence for the survival of the democratic set-up of governance.

While framing the guidelines, the courts have taken the gender factor into consideration though the term 'criminal' has no gender as such. The unequal social status of women, the disadvantageous position they are placed in educational and economic issues in the family and the historical bias against them all made the Apex Court and the Expert Committees to recommend a different treatment of women by the judiciary when they were brought before them. Though the recommendations and suggestions are there on paper, the judicial share of doing injustice to women are very less and less.

The Supreme Court of India has imposed certain obligations on the lower judiciary, especially when women are produced as accused before them. On the first production, the judicial officer is duty bound to enquire about the illtreatment meted out to her by the police. The time and mode of arrest, the persons who arrested her, the mode of interrogation are some of the issues on which the judicial Magestrate has to be satisfied before remanding her. The
Magistrate, as per the Supreme Court guidelines, should offer the facility of medical examination.

The accused woman's thumb impressions are taken and they are remanded to judicial custody on a routine basis. The women undertrials stated that the Magistrates have not even talked to them directly. The escort police is used as the medium for communicating with the women accused. One is not sure whether the Magistrates are behaving so out of respect for or utter disregard for the females. But in any case the females are hurriedly sent to jail. The majority of women undertrials are found to be ignorant of the language of the court and do not know their fate till they send to prison. Although, the majority of the women prisoners are apparently star offenders some of them are arrested for relatively minor offences, their cases are not referred to Probation Officers for pre-sentence investigation.

The production of undertrial women prisoners at the end of the remand period is delayed because of minor administrative deficiencies such as lack of a female police escort, absence of a transport vehicle, etc. Even when produced, their remand is routinely extended by further 14 days without giving even a thought about to set them out on bail. It is a fact that judicial remand is a
protective intervention but in the case of women a wise exercise of remand power is essential. Normally the women are not 'bail jumpers'. There is no record of women prisoners making an escape from prison in Andhra Pradesh. Even when escaped elsewhere in the country they were very easily traced. They are not dangerous even when outside on bail. So it is suggested that women may liberally be granted bail on personal bonds without any violation of the broad principles of administration of justice.

For this, the judges and Magistrates require a thorough sensitization and orientation for the handling of judicial and legal procedures affecting the women. The psychological needs and the behavioural patterns of women should form part of the training programme of judicial officers. Just as women police are recruited, women police stations and State Jails for Women are formed, it may be considered to have separate women judicial officers to deal with women offenders. Such women judicial officers could understand better the woman offender's responsibilities towards her dependent children and family and minimise the undue damage likely to be caused by the judicial ambivalence.
There is a need to involve the law schools and colleges in the practical legal work as it sensitizes the young minds in understanding their obligation to the weaker sections of the society, particularly the women and children. This sensitization of prospective judicial officers at a very early age will go a long way towards shaping their liabilities towards the women as and when they assume office.

The women who are not involved in serious offences may be released on probation with supervision rather than imprisoning them for short periods. There are cases where women were held as undertrials for a period longer than the actual sentence they would have been convicted. This is an embarrassment for the functioning of the legal system and also sticks a social stigma on the face of the women. So the agencies involved in the investigation of crime, the police and the judiciary should work in a spirit of cooperation and coordination which will ultimately benefit the women in custody and the society.

As things stand the procedural aspects are rather complicated and cumbersome. The court language continues in English, which is understood by a small fraction of the population.
Women in Prison Custody

The number of Acts relating to prisons and prisoners are, the Prisoners Act, 1900, Consolidated the law relating the prisoners confined by order of a court and provides for the custody of prisoners. The attendance of the prisoners in courts is covered by the Prisoners (Attendance in Courts) Act, 1955. Transfer of Prisoners Act, 1950, permitted the removal the prisoners from one State to another.

The Prisons Act, 1894 provides for the regulation of prisoners almost throughout the India. This Act defined the duties the prison officers including medical officers, admissions, moval and discharge of prisoners, discipline of prisoners, food, clothing and bedding and different categories of prisoners as well as the issues relating to their health. But there are hardly any provisions in this Act, for safeguarding the Intetests of the women prisoners. Amendments to this Act are to be made keeping the interests of the women prisoners in mind.

The maintenance of jails is a State subject. The jails are run in different States on different lines. There is no national policy on prisons. The recommendations of the National Expert Committee
on the women prisoners are not implemented by many States. Andhra Pradesh is progressive in jail administration. But still a National Prison policy is desirable in the interest of the prisoners in general and the women prisoners in particular.

Imprisonment damages the mind of a person. It wrecks the personality of the individuals, more so with the women who are sensitive. With their social, family life gone, their interaction with the outside world curtailed, the women often go into deep depression. The problems associated with the women prisoners were identified and accordingly some rules and regulations were made in the jail manual.

Even convicts and undertials are allowed free interaction during the day time. They are segregated only during lock-up time. It is necessary for the separation of women convicted in Immoral sexual offences, since they are likely to influence young girls and other vulnerable women in the prison.

Further, the classification of the women prisoners, on the basis of age, nature of crime, type and length of sentence, etc., are not followed in the State jails for Women. In some cases, the women
prisoners couldn't move out of the jail as they didn't have the financial capacity to fulfil the bail conditions stipulated by the court.

Even when released on bail, the social stigma faced by the women are more disastrous than their life in jail. The societal acceptance of such women is rather difficult. If one is an unmarried lady, it will be very difficult to find a suitable groom. If she is a married lady, she is not accepted back by the in-laws. Her parents and children are the worst sufferers.

In case of a convict prisoner life is more miserable for she has to live with the stigma of 'jail bird'. When the sentence she served is long, she loses touch with her family members. The husband in most cases acquires a new wife. Her children are either ill-treated or abandoned.

To avoid such tragic social consequences on women, bail should be offered liberally without sending them to judicial custody. The routine way of ordering the 14 day remand has to be abandoned by the Magistrates in case of women accused. Whenever a mother is sent to jail her minor children suffer. The Magistrates concerned should make needed enquiry regarding the
children of the women and order suitable custody of those children
depending upon the age of the children and the rules of the jail
manual.

Probation, parole and other non-institutional modalities of
corrective treatment shall be widely considered in the case of women
offenders. There are no many habitual offenders in the jails. Most of
them are star offenders and can be corrected very easily. So those
women prisoners who possesses no security risk may be transferred
to open jails where work facilities related to their agricultural or
other occupational background are available.

Special consideration can also be shown to women prisoners for
their premature release in cases where the women prisoner is the sole
bread winner or where no surrogate care is possible for older
dependent parents or children. In a case of the prisoner who is
pregnant even at the time of her entry into the jail, reduction or
suspension of sentence can be considered as far as possible to avoid
delivery in jail.

The vocational training which is presently imparted to the
women in jails is not of any serious rehabilitative value. The women
prisoners are presently trained in sewing, envelope making, lace making, etc. These training programmes have no relevance to the social or occupational background of the convicts. Most of the convicted women are from agricultural families.

It is necessary that the prisoner's social background is taken into consideration before assigning a training programme. New agricultural practices like vermi composting, organic farming can be started with the help of people from agriculture department of the Government or Agricultural University. The women inmates can be trained in gardening, lawn laying, horticulture, vegetable growing, etc. The training so provided should be employment-oriented. In otherwords, it should be directed towards the labour requirements of the market or lead to self-employment. Experts in rehabilitation programmes may be associated in the designing and implementation of the innovative training programmes for the prisoners.

Such training programmes may help the prisoners in the gainful, utilisation of the skills and the experiences on their return to the society. A prisoner coming out of the prison should feel that she is now equipped to face the likely challenges in the society both for her honourable living and economic well-being.
An alternative to the prison terms should be thought off. Community service is a good alternative and it can be implemented. In this way, a woman offender is not cut off from the society. Rather this system helps the woman in getting involved and getting integrated into the society.

It is the time when the women require more support and it is the Government is found wanting. There is no mechanism or machinery to trace the welfare of the former convicts. The government may consider some mechanism either directly or through non-governmental organisations to take care of the women who are released from jail.

**Women in Social Welfare Custody**

Reformation rather than punishment should form the intention the reformation of a prostitute is a long process and requires prolonged custodial stay. To take women away from the girls from prostitution and to equip them with some skills for self-sustenance during the five year custodial stay should be the normal practice. Since reformation of the prostitution is an investment in the improvement of social health, the Government should consider the opening of more rescue homes in different parts of the State. But
in the State of Andhra Pradesh, there is no facility of rescue homes at the District headquarters in all the Districts. Only one rescue home has been established at the State capital, that too in a rented home without proper facilities. There is neither proper classification of the inmates nor segregation. The rescue home is not manned by a trained Superintendent. Medical facilities are meagre while psychiatric facilities are not available. Education programmes are also not properly provided. There is no meaningful and motivated programmes of earning.

**Women in Mental Health Custody**

The treatment of criminal lunatics is presently not fair and humane. They are treated more as criminals rather than lunatics, keeping them in isolation under the care of the jail staff who are untrained in attending to the needs of the mentally ill persons. The I.G. of Prisoners who is equally ignorant of the assessing process of mental status of a lunatic vested with the overall charge of the lunatic prisoners. The mentally disturbed criminals need to be shifted to mental health centres and be kept under the care of psychiatrists.
The First Class Judicial Magistrate or Metropolitan Magistrate is vested with the power to curtail the liberty of a person and to decide the place of the custody. The criminal court has also jurisdiction to try the mental capacity of the accused vis-a-vis the offence alleged to have been committed and the ability to plead and answer the charge. An ordinary judicial officer without proper knowledge of psychiatry can't competently discharge his forensic responsibility in a technical field beyond his normal equipment. To assist the Magistrate in cases dealing with the mentally ill prisoners a psychiatric doctor should be designated. Law can't do it alone and medical questions can't be left to legal judges.

There are two women prisoners in the Yarragadda mental hospital, in Hyderabad. The main problem, as per the mental health specialists attending to them, is the absence of the family support to the victims which is a pre-requisite in any mental health treatment. The women under depression or mental derailment require more understanding and constant companionship to note down the ups and downs of their moods.

Mentally depressed persons are disallowed by the family members. There are actually no visitors for them. As a result, the
institutes of mental health care became custodial institutions rather than therapeutic institutions.

The under trial prisoners, referred to the mental hospitals, should have been released on bail if they were neither given free legal aid nor their families supported them. Free legal services are virtually the right of the patient and an obligation of the state. Justice through law has relevance to a mentally ill prisoner, if a lawyer qualified in mental health jurisprudence is sent to the institutions. Such an arrangement which is not presently available may be made by the Government to aid the mentally ill-prisoners.

The problems of the mentally ill-prisoners must be justified and persons attending on them should be educated and sensitized in order to elicit their support and help in the treatment. Families should be sensitized to accept the mentally ill-prisoners since their cooperation is a key element of the treatment.

Counselling plays an important role and voluntary organisations should be encouraged to work among the mentally ill prisoners then only they can be mingled in the society.
CHAPTER XI

Conclusion and Suggestions

A stitch in time saves nine is good criminology.1

In our country unfortunately, the legislatures have not contemplated properly, in adopting the modern trends in prison administration and correctional services. The Prisons Act 1894 has been enacted nearly 120 years back and implementing the same without relatively amending it to cater the present days changes to reform the prisoners and to make them to lead respectable life in the society after their release from the prison custody. As it was enacted in the reign of British era to sobonate the freedom fighters, where there are no Human rights, fundamental rights and constitutional rights in those days, it may be suited for them in those days, but it has to be amended and upto dated as to cater the present existing fundamental rights, human rights and constitutional rights. Though the rules present in the Prison Manual, is good and valid it has to be amended according to the present socioeconomic and beneficial trends. The prison manual is enacted on the principles and laws laid down in the pre independence enactments. All the prison laws were

---

1. Dalbir Singh and others V. State of Punjab, AIR 1979 SC 1384.
clearly promulgated with the retributive and deterrent theories of incarceration in view. In 1959, a model prison manual was enacted with a view to encourage and update the various states prison manuals. However the Andhra Pradesh prison manual has to be made up to date and revise it in consonance with the present constitutional rights, and fundamental rights human rights, as India was also a one of the signatory to the United Nations organisation.

The prison Acts and the prison manuals still contain the unconstitutional punishment of whipping of the prisoners as a disciplinary punishment against the prisoners, those who are not obey the orders of the prison officers, those orders may be legal or illegal and the same was also greatly misusing by the prison officers, against the prisoners those who has questioned them on their misbehavior with the prisoners, like reduction of food poor quality of food, reduction in rations, and the prolonged use of fetters as punishment. Still the prison authorities are misusing their powers and committing grave mistakes in the classification of prisoners without based on their social, religious and economic status prior to at the time of and after imprisonment, instead of on more logical and fair bases such as age, physical and mental health, length of sentence, the seriousness of
crime, and previous criminal history. The prison manual gives more
discretionary powers to the Superintendents of the prisons and
thereby, it widening the scope for corruption, abuse, misuse,
harassment and favoritism among the most of the prison authorities.
This kind of discretionary powers given to the Superintendents of
prisons are against the constitution and principles of natural justice,
particularly it has became a big problem with regard to the
determining and punishment of prison offences, in which the
discretionary power of the Superintendent is, for all practical
purposes, unrestricted. Fortunately due to the judicial activism by the
high courts and Supreme Court and also by positive media, in the last
few decades the case laws fills the lacunae in many of the areas where
the prison manuals are left vacant or silent. The Supreme Court of
India on several occasions, ordered the state governments to reform
the Prisons Act 1894, to completely overrule the various state prison
manuals along with Andhra Pradesh Prison manual, and to incorporate
the recent case law regarding prisoner’s rights, among them a few
recommendations made by the Supreme Court however have been
completed this lacunae.
The law makers of that time also took the retributive and vengeance view towards the prisoners by incarceration and afforded very few and few rights to the prisoners. Most of the laws regarding prisons and prisoners granted very much amount of discretion in the hands of the prison Superintendents and other prison higher officials.

The view taken by the legislatures and courts, regarding prisoners rights often reflect their perception about the purpose of incarceration. In past days the dominant theories regarding incarceration were that of 'retribution' and 'deterrence' (inflicting the same to what he has done to others and to create fear in the society to prevent people for committing crimes). In the past days, in India as well as elsewhere, the courts responded to these theories of punishment, by adopting the 'deterrent punishment or hands-off doctrine' approach to prisoner's rights. Under this approach, courts refused to interfere in the area of prisoner's rights on the ground that incarceration or imprisonment deprives prisoner's rights of all their rights, except for those which are specifically enumerated. The "hands-off doctrine" was enunciated in the case of Ruffian V. Commonwealth\(^1\) by the Supreme Court of

USA. The United States Supreme Court observed that, the moment when persons are arrested and imprisoned them, lost all their fundamental rights and become essentially like a 'slave to the state' or like. In our country also in A.K. Gopalan V. State of Madras, the Supreme Court held that prisoners in lawful detention could not claim any rights under Article 19 of the Constitution as such rights are only for free men this view of the Supreme Court may be good on those days, subsequently the supreme court also has liberalized this view and gave somany contradictory verdicts in it's different judgments. This was a case of preventive detention but the attitude remained the same to the undertrial prisoners.

However at present, the attitudes towards incarceration have been changed in recent times from 1990 onwards. Instead of stressing on retribution and deterrence theories of punishments, the contemporary penologists favours towards the 'rehabilitative and reformative theories' (reforming prisoners so that they may be released and become honest, law-abiding, productive members of their family and society). Under the rehabilitation approach, the

1. AIR 1950 SC 27.
prisons are regarded as a ‘correctional institutions’ which should treat the prisoners as human beings worthy of respect and impute to them in useful employment and self-improvement programmes, self establishing skills and law-respecting values. In the modern days approach, penologists views prisoners as an individuals retaining their fundamental rights during their prison life also and as needing help to rehabilitate them before their release. Since last few decades, Indian Courts have began to recognise the modern tends in penological thoughts and have delivered many judgments against the prison vices which afford prisoners a broad array of their constitutional and fundamental rights along with other rights like human rights, civil and political rights. Now a days, as the law stands for prisoners basically retain their fundamental rights to the extent that such rights are consistent with incarceration procedure. One of the significant post-independence developments in the field of correctional services has been the emergence of the prisoner’s rights has became a touchstone to test the laws of the nation in the international society, which has been responsible for the treatment of prisons, as well as the movement towards standardisation of prisoners rights. Though the prisoners rights has its roots in the United Nations initiatives concerning civil
and political rights at the international level, and the enactment of the Universal fundamental rights by the constitution of India at the national level, in fact the real implementation prisoners rights was effectuated by the protest efforts came from the social activists and appellate court rulings, particularly in the post-emergency era. The occasions for judicial intervention in prison matters are entirely changed and the range of interest covered was so vast that, at times now the outcome is theoretically described as the ‘prisoner’s rights jurisprudence’. In no other country of the world has the judiciary played such a key role in involving prisoner’s rights implementation and ultimately contributing to the movement for prison reforms itself.

Supreme Court of India and High courts played a progressive dynamic role in interpreting the Constitution and fundamental rights, during the post-Manaka case period and brought into the purview of ‘liberty’ as envisaged in article 21 of the constitution and its expansion in many rights that were not specifically recognized in pre-Manaka case. The Supreme Court through its progressive dynamism and social activism virtually recognised and expanded the rights of prisoners during the last three decades. The Supreme Court has been continually paying attention to the problems of torture of prisoners,
overcrowding in jails, bail procedures, sanitary conditions, nutritional standards, medical facilities and reformative conditions in prisons and many other allied matters concerning the prisoner’s rights. The Supreme Court through its judicial activism initiated by the social organisations, has expanded the prisoner’s rights in such way that they are in conformity with the international human rights covenants.

In the international level the NHRC has been doing a good commendable work for the protection of interests of prisoners and promoting them of the proper implementation of the rights of prisoners. The periodical visits in to the prisons by the commission and the periodical visits of judicial officers and its interaction with the NGOs, its regular communications with the officials of prisons, its periodical meetings with the concerned personnel and its draft prison code have all contributed immensely for the advancement of prisoner’s rights and prison conditions humane. In addition to the regular work of reviewing the various rights of prisoners the Commission also conducting workshops and training programs for the prison officials as part of its aign of educating the concerned persons in the knowledge of the rights of prisoners.¹

¹AIR 1950 SC 27.
The Commission addressed letters to all Chief Ministers suggesting the measures in improving the efficient prison administration\(^1\) and reducing the number of undertrial prisoners in the prisons.\(^2\) The Commission seriously condemned the practice of keeping mentally challenged persons in prisons and warned that in all such cases it would award compensation to the kith and kin of the concerned persons and directs the State to recover the said amount of compensation from the individual officers of prison administration responsible for keeping such persons in prisons, for violating the prison laws and for not taking proper steps for the welfare of the insane prisoners.\(^3\)

The Commission has been continually insisting that State Governments effectively implementing the Supreme Court's judgments, in the Common Cause V. Union of India and Others case, which laid down guidelines and gave directions in regard to the release of undertrial prisoners on bail with self bond. However reports from the Commission's Special Reporters and Representatives appointed to visit prisons indicate that, in many cases, the bail orders

\(^{1}\) Ibid Para 3.67.
\(^{2}\) Ibid Para 3.68.
\(^{3}\) Ibid Para 3.69.
passed by courts have not been given effect as many prisoners could not provide sureties and have therefore had to continue languishing in prisons. This is very unfortunate situation that has to be remedied at the earliest stage as early as possible throughout the state.

SUGGESTIONS

The Prisoners are kept in prison custody and also under different penal custodies and each prison has a different environment and conditions, which require some changes for healthy environment which are suggested hereunder. It should be noted that some of the suggestions are common to all prisoners, and some suggestions are specific to a specific type of prisoners. These suggestions are in addition to the recommendations already made by the National Expert Committee and the National Commission for prisoners and the verdicts of the supreme court.

1. Degrading and inhuman treatment of prisoners shall be treated as a serious offence, relevant amendments has to be made to Indian Penal Code to punish such prison officers.

2. At the time of sending a person to judicial custody the Magistrate or judge must give a list of does and do nots to the convicted person
to enable the accused about his rights and duties in the prison and also it helps the convict to know how to behave in the prison.

3. All the prison places should be made safe and fearless environment in the mind of the prisoner in accordance with law.

4. An obligation should be imposed on the Prison authorities by the sentencing judges and Magistrate to maintain all kinds of fear less and tension free environment in the Prisons.

5. Adequate medical facilities and medical examination of the Prisoners must be done at the time of admission into the prison and in regular intervals thereafter are to be conducted by the well qualified senior medical officers.

6. Prisoners suffering from terminal diseases shall be given affective medical treatment and such prisoner shall be placed in an isolated hospital rooms until such terminal disease was cured, if the disease is of incurable nature than, such Prisoners shall be released from the custody in the initial stage itself to protect the health of other prisoners.

7. If any women prisoner was send to prison under sentence, women having newly born children of milk nurishing Baby, for
those prisoners special care shall be given to the mother and child by way of medical and nutritional needs shall be provided.

8. The main problem with the prisoners is lack of proper education to understand their behaviour in prisons and to build up self confidence are the main problems, to became aware of their rights in the prison and education for the prisoners in prison shall be made compulsory.

9. Prisoners shall be imparted training which suits their qualifications and skills which makes them economically self sufficient and capable of living independently in the society.

10. Goods marketing facility and self earning potential should form the basis for the training of all the prisoners in custody.

11. Drawing, education and games may be added to recreation.

12. If the women prisoners are with newly born children than it requires adequate orders, in keeping the interests of both the mother and child, be issued by the sentencing Court.

13. Even after the attainment of five or six years to the child, the prison authorities shall ensure that, the mother and child link is not totally severed the needs of small babys.
14. A complaint box should be provided in the prison premises which shall be opened in the presence of a judicial Magistrate of first class at least once in a week and each complaint or request shall be registered and enquired into it without any delay.

15. Post release rehabilitation is a major challenge and it shall be dealt at once, engaging various governmental agencies.

16. A Visitors Board from a different sections of the society, shall be constituted to improve the prison conditions.

17. Proper training and sensitization of prison staff need to be carried out from time to time.

18. Alternatives to custody may be thought by the sociologists, jurists and executives, particularly in case of star offenders.

19. The visits of judicial officers to the custodial premises be made more frequent and more meaningful.

20. The students of legal study should be involved, as a practical legal work, in studying the custodial premises of their area so as to make them understand their obligation to the weaker sections of society.

21. The establishment of socio-legal counselling cells in all police
stations, institutions to aid the inmates should be considered.

22. Judicial camps can be conducted in the prisons to help the accused in getting speedy justice.

23. Legal aid camps shall be organised periodically to educate the prisoners.

24. Custodial negligence abuse of powers shall be dealt with severely by making the concerned person solely responsible for compensating the victim.

25. A separate statute on the custody and treatment of female prisoners to be developed in India and in Andhra Pradesh.

26. Separate state Jails for Women are to be established in each State, and they are exclusively run by the female officers only.

27. Separate women police stations should be established with women police Staff than the women accused should ensure privacy.

28. Keeping in view the role of women in the family, the detention of females involved in non-violent and minor offences shall be punished with fine only.

29. If arrest is warranted and no women police are available, women's custody shall be presumed and handed over to women
police staff.

30. No woman shall be remanded to custody without recording the special reasons for the arrest.

31. Provision regarding bail and bonds should be liberalised and bail may be granted to women accused in nonbailable offences also.

32. Younger childrens should be allowed to stay with their mother in the prison without any fear.

33. During the interrogation, the legal counsel shall be allowed to stay within the premises of the women in custody.

34. Facilities for legal assistance, and guidance should be given.

35. Except in extreme situations when detention is desirable, the Magistrate shall release the women on her self bond.

36. The Judges and Magistrates require a thorough sensitization and orientation for a more scientific and humane handling of the judicial and legal procedure affecting women.

37. Over crowding of prisons could be remedied by speedy trials and the constitution of jail Adalats to dispose of petty cases.

38. Imposition of fines can be considered for minor offences, instead
of detention.

39. Generally, the women will not make any attempt to escape. So the women accused can be released on bail liberally.

40. Women prisoners may be released on probation or with fine rather than imprisonment for short periods.

41. The judiciary itself has to understand the women offenders role towards their dependent children and family and try to minimise the undue damage caused to them through judicial processes.

42. The Court procedures has to be simplified to avoid unnecessary technicalities to understand even by illiterate persons.

43. Special courts for women, just like women jails, with women judicial officers should be established as early as possible.

44. Pretrial detention and short term prison sentences should be replaced by non-custodial alternatives.

45. At least once a month, the female prisoners shall be allowed to go and meet their family members at their own cost.

46. Meditations, yoga, etc., may be included in the correctional programmes for all prisoners.
47. Regular moral lectures, counselling and consultancy services are to be provided at least once a week by experts.

48. Women remand prisoners should not be made to travel in the same vehicle along with male prisoners.

49. The administration of the prisons be streamlined to ensure that, the prison staff be made more accountable for their conduct towards the prisoners.

50. Prisons is a State subject under the Constitution and therefore different States have different laws. There is a need to move the subject of prisons and prisoners from the State list to Concurrent list.

51. The use of effective immature release methods should be promoted rapidly.

52. The custody and treatment of the women prisoners should be dealt in a separate section.

53. The classification of prisoners has to be examined afresh in terms of the threat posed to society.

54. Jail visiting committees comprising members of the judiciary, social workers, media personnel and legal academicians shall visit
the prisons on every second Saturday.

55. Parole and other non-institutional modes shall be widely used in case of the old aged and star offenders.

*****