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# **VICTIMISATION OF MENTALLY ILL INCARCERATED WOMEN AND THEIR HUMAN RIGHTS**

*Authored By - Kulsum Haider  
& Dr. Sohail Nazim*

## ***Abstract***

*It is foremost need to understand the crime and victims. Victims are persons with rights and privileges, but when we talk about prison life, little is known about the victimisation of incarcerated women, including violence inside the prison. Physical, emotional, and sexual violence leads to a significant human rights crisis.. Many prisoners who have experienced abuse (physical, sexual or emotional) develop behaviour that harms their families, communities, and themselves. Violence inside the prison is influenced by crowding in cells, lack of staff training and inadequate reporting procedures. Other factors contributing to prison violence in women's facilities include re-traumatisation through sexual abuse, rape, handcuffing, torture, and separation from children.*

*Mentally ill incarcerated women kept with other inmates instead of sending them to mental health establishments or providing them medical and legal aid violates their human rights. Even though, Human Rights standards are set for protecting the rights of prison inmates to end these atrocities among incarcerated women. The responsibility lies on the government to effectively implement the legislation protecting incarcerated women regardless perpetrators of the crime. The researchers, through doctrinal work will highlight the victimisation of mentally ill incarcerated women in criminal justice system in India, issues and challenges and their human rights.*

***Keywords:*** Abuse, Incarcerated women, Human Rights Victimisation, Mental illness, Prison.

# I. INTRODUCTION

Crime and victim theory have always addressed the rights of the victim followed through the crime committed by the offender. From the day of crime till the end of incarceration, the prisoner face a number of challenges inside the prison, from violence to violation of their human rights. Moreover, women being vulnerable face more atrocities as compared to than men. Incarcerated women who are suffering from mental illness need special care when they are detained or imprisoned. Criminal justice systems often entrap people who commit crimes and cannot access mental health treatment.

The crime rate is day by day increasing throughout the world. With crime comes the number of incidents in consonant to the crime. As an offender commits a crime, he lands in prison or jail, awaiting trial or conviction. The prison population in India has decreased by 3.3 per cent. But as per the latest report of NCRB, there has been 1887 total prison inmates who have lost their life while they were behind the prison walls. Counting 1642 natural death, 189 died cause of un-natural death and 56 inmates reason for death is unknown.<sup>1</sup>

The revised Model Prison Manual 2016<sup>2</sup> emphasises prison computerisation, special arrangements for women prison, rehabilitation services, prison inspections, death row detainees" protection, the repatriation of foreign detainees, and strict emphasis on prison staff.

In May 2020, the gang-rape incident of a woman accused of murder occurred in the Madhya Pradesh police lock-up, which came to the district judge"s knowledge after five months, and the warden also didn"t report the incident to the authorities since the offender was none other than a policeman.

<sup>3</sup> Another incident is of thirty inmates that were injured due to clashes in prison during September 2021<sup>4</sup>in Tihar jail. Similar instances can be seen day by day, the nature and number of violations inside the prison walls give rise to a violation of human rights, and if

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<sup>1</sup> National crime Records Bureau, *Death and illness*, (Ministry of home affairs ,2020) <[https://ncrb.gov.in/sites/default/files/psi\\_table\\_and\\_chapter\\_report/Table-8.1-2020.pdf](https://ncrb.gov.in/sites/default/files/psi_table_and_chapter_report/Table-8.1-2020.pdf)> accessed 07-September 2022

<sup>2</sup>Government of India, *Model Prison Manual 2016*, (Ministry of Home Affairs) <<https://jail.mp.gov.in/sites/default/files/partper cent201.pdf>> accessed 28 July 2022

<sup>3</sup> Press Trust of India, „NHRC issues notice to MP Govt, police over „gang rape" of woman in lock-up", (*Business Standard* Oct 19, 2020) <[https://www.business-standard.com/art./current-affairs/nhrc-issues-notice-to-mp-govt-police-over-gangrape-of-woman-in-lock-up-120101901584\\_1.html](https://www.business-standard.com/art./current-affairs/nhrc-issues-notice-to-mp-govt-police-over-gangrape-of-woman-in-lock-up-120101901584_1.html)> accessed 28 July 2022

these instances are not reported, it is a gruesome failure of justice as well. As a result of a lack of awareness about human rights, Indian prisoners have been treated inhumanely by law enforcement agencies. Consequently, they become victims of the criminal justice system.<sup>5</sup>

## II. VICTIM AND VICTIMISATION

In contrast to current popular beliefs, we can start by noting that the seemingly unbreakable association between “victims” and “crime” in the public mind is a comparatively recent phenomenon. Previously, the word “victim” was more frequently linked to general poor fortune than to crime.<sup>6</sup> In the Oxford Dictionary, the victim is described as one who has been killed or tortured by another, but then goes on to describe it as one who has suffered harsh treatment, cruelty, oppression, suffered any injury in result of any event, or circumstances through oppressive or impersonal agency, or has died.<sup>7</sup> Under the The Criminal Procedure Code (Cr.P.C), a victim is a person who has suffered loss or injury by the act or omission of the defendant, including their guardian or legal heir.<sup>8</sup> Who are victims, and how do we view them? Despite appearing simple, these questions do not invite any factual responses.

The victim is a person with rights and privileges. The impact of crimes extends beyond society and violates victims rights. It is the right of victims to be recognised as persons by the law, and as an individual with dignity.<sup>9</sup> Such rights, however, can only be meaningful if they are effectively enforced. When the criminal justice system views a victim as nothing more than a witness to a crime, it becomes the source of frustration and results in secondary victimisation. Therefore, understanding the problems, harms and victimisation of crime victims, who deserve specialised care, is of the utmost importance.<sup>10</sup>

<sup>4</sup> Devika Sharma, „Increasing Incidents Of Violence Among Inmates In Tihar Jail: NhrC Issues Notice To Govt. Of Nct Of Delhi’, (SCC online Blog, 10 October, 2022) <<https://www.scconline.com/blog/post/2021/10/12/increasing-incidents-of-violence-among-inmates-in-tihar-jail/>> accessed 15 July 2022

<sup>5</sup> H.R Bhardwaj, Crime, *Criminal Justice and Human Rights*, (Konark Publishers Pvt Ltd. 2001)192.

<sup>6</sup> James Dignan & Mike Maguire, *Understanding victims and Restorative Justice*, (Open University Press, 2005)13-50

<sup>7</sup> The Oxford Learner’s Dictionary, *Definition of Victim*, <[https://www.oxfordlearnersdictionaries.com/definition/american\\_english/victim](https://www.oxfordlearnersdictionaries.com/definition/american_english/victim)> accessed 22 July, 2022

<sup>8</sup> The Criminal Procedure Code (Amendment) Act, 2008, s 2(wa)

<sup>9</sup> Jo-Anne Wemmers, „Victims’ rights are human rights: The importance of recognizing victims as persons” (2012) TEMIDA <<http://www.doiserbia.nb.rs/img/doi/1450-6637/2012/1450-66371202071W.pdf>> accessed 22 July, 2022

<sup>10</sup> Ibid.

When we talk about victims, we ultimately talk about the contours of victimology that focus on the victim, its type, cause and effect, and the costs of victimisation. It explores victims of crime, the criminal justice system, including behaviour, associations with criminals, and the criminal justice system.<sup>11</sup> There are several characteristics of victimisation, including abuse, pain, destructiveness, parasitism, and unfairness. It is the scientific study of the harm caused to people by illegal activities on a physical, emotional, and financial level. Victorian Equal Opportunity and Human Rights Commission has provided the legal definition of victimisation, which means when someone is subjected to or threatened by the other person to any detriment.<sup>12</sup>

Prison victimisation has long been acknowledged as a serious issue on a global scale. Prisoners develop specific traits that make them more prone to victimisation and vulnerability. Given the complexity, diversity, and quick evolution of the victimisation problem, it is challenging to estimate the rate of victimisation. The mechanics of victimisation are evolving, posing new problems and necessitating a number of changes in the prison setting. The provision of efficient and compassionate care by prison staff, in conjunction with quality rehabilitation programmes, is one of the most important ways to combat many forms of victimisation in prison.

Prisoners who are treated humanely will behave in a humane manner. Human rights organisations emphasise the importance of providing prisoners with a secure, compassionate environment free from victimisation.<sup>13</sup>

## I. INDIAN PRISONS AND PRISONERS

Prisons are places where there is a strong likelihood that socially excluded individuals will be present. However, because individuals had lives before being imprisoned and would resume them after being released as prisoners do not exist in a vacuum. It matters how people decide to engage with society and learn, before going to prison while serving their terms, and after being released.

<sup>11</sup>What-when-how, „Victimology“, (In Depth tutorial and Information), <http://what-when-how.com/interpersonal-violence/victimology/> accessed 10 June, 2022

<sup>12</sup>Victorian Equal Opportunity and Human Rights Commission, „Victimisation“, <<https://www.humanrights.vic.gov.au/for-individuals/victimisation/>> accessed 10 June, 2022

<sup>13</sup>K.S. Rekh Raj Jain, „Effective and Humane Restoration of Prisoners With Special Reference to India“, (2020) Journal of Victimology and Victim Justice <<https://perspectivesblog.sagepub.com/blog/criminology/effective-and-humane-restoration-of-prisoners-with-special-reference-to-india>> accessed 10 June 2022

In recent years, penalisation and the conditions of prisoners have taken on critical importance. Despite being a crucial component of India's criminal justice system, prison administration has been under-appreciated and neglected. Although prison administration plays a vital role in India's criminal justice system, it is largely ignored and undervalued. Historically, the criminal justice system has never been subjected to such harsh criticism with respect to human rights. In India, prisons are typically associated with political and civil rights violations, a spiritually and physically brutal prison environment, sexual perversions, and secondary criminalisation, all of which make it difficult for convicts to reform.<sup>14</sup>

Corruption, misconduct, and mistreatment of prisoners are prevalent in prisons today. The prison system is rife with drug trafficking, intoxication, favoritism, groupism, political influence, and deprivation. The system and machinery for investigating the grievances of prisoners are ineffective. For prison inmates, there is no free legal aid system that can assist them with their legal problems. India's human rights discourse now focuses on many indeterminate areas that have received little attention until recently. As a matter of follow-up action, despite various court judgments of far-reaching significance, prisoners' rights are one of those gray areas.

Prisons may suffer health problems due to poor sanitary facilities, overcrowding, lack of exercise, mental stimulation, and poor health care. Poor nutrition plays a role, both before entering prison and inside the prison, in contributing to their health problems. Overcrowding and poor ventilation are problems in prisons. Inadequate budget allocations and inadequate treatment are prevalent in health care. Mentally ill prisoners make up a tiny portion of the population, yet they are often forgotten about by outsiders and those in prison. Despite their illness and the prevalent social attitudes, they are the most helpless victims of human rights violations.<sup>15</sup>

In spite of several laws and committees, the jails remain in deplorable condition. Even though the administration knows the hard facts, it does nothing to address them. According to a prison officer, women inmates face the following issues<sup>16</sup>:

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<sup>14</sup> Mahendra P. Singh, *Crime and Redemption of Criminals Probation of Offenders*, (Deep & Deep Publications, New Delhi 1987)25

<sup>15</sup> National Crime Records Bureau, *Prison Statistics 2000*, (Ministry of Home Affairs, 2000)21 <<http://164.100.68.46/StatPublications/PSI/Prison2000/Prison2000.htm>> accessed July 27,2022

<sup>16</sup> *Supra* note 18

- i. Reformation Programme
- ii. Health and hygiene
- iii. Vocational training
- iv. Admission
- v. Psychological abuse
- vi. Classification
- vii. Meeting with friends and visitors
- viii. Rehabilitation on release
- ix. Resocialisation, and
- x. Acceptance.

In most cases, women who are admitted to prison are in a mentally disturbed state. Mental health issues such as psychosis, major depression, and personality disorders affect nearly 60% of inmates.<sup>17</sup>

## II. PRISONERS WITH MENTAL ILLNESS

There is a close connection between human rights and mental illness. Prisoners with mental illness have a double disadvantage. Inmates who receive quality psychiatry care are still stigmatised as both mentally ill people and criminals. Mentally ill people often do not receive proper treatment and remain in prison for years. There may be many reasons for this, including incapacity to stand trial, lack of support, or an unwillingness on the part of the family to bail out the individual.<sup>18</sup> Violations of human rights themselves can be detrimental to a person's mental health and contribute to a vicious cycle as shown in the figure given below. According to Johnson impairment disability and stigma of isolation and discrimination breeds human rights violation that results in increased stress and frustration, precipitating mental disorder which further results in impairment disability and stigma of isolation and discrimination.<sup>19</sup>

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<sup>17</sup> State Commission for women, *Women in prisons- an exploratory study in Odisha* (SRCW 2014-2015)5

<sup>18</sup> Suresh Bada Math (et al, ed.), *Mind Imprisoned: Mental Health Care in Prisons*, (NIMHANS, Bangalore 2011)

<sup>19</sup> Kristen Johnson (et al.,) „Association of sexual violence and human rights violations with physical and mental health in territories of eastern democratic republic of the congo“, [2010] JAMA

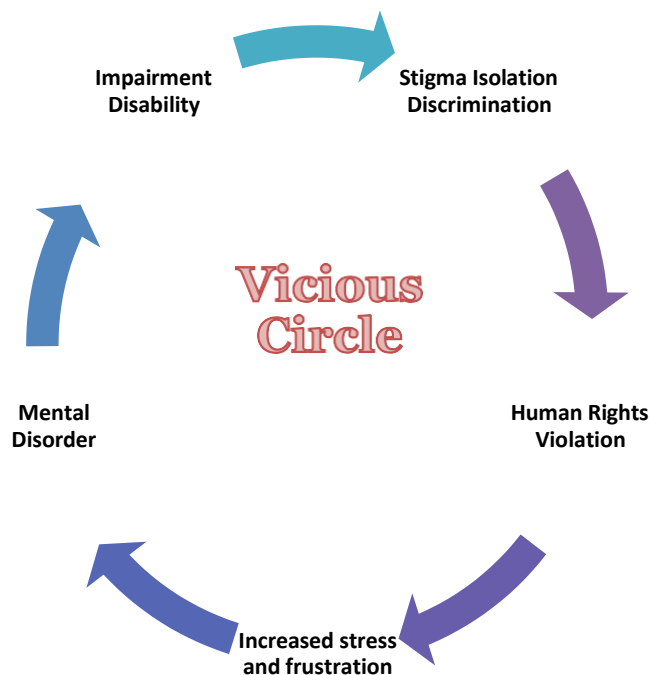


Figure 1: Vicious circle of human rights and Mental disorder

Mentally ill people tend to stay in prison for unnecessarily long periods of time because their illness goes unnoticed, undiagnosed, and untreated. It is possible that he/she will not be able to stand trial even if they are brought to the court's attention. An absence of timely treatment and continuous care further aggravates the situation.<sup>20</sup>

Mental health problems are very common among women in prisons around the world. Among these are mental disorders as well as high levels of drug or alcohol dependence. In prison, many women come from deprived backgrounds where they have the possibility of having been abused physically or sexually, having been addicted to drugs or alcohol before being imprisoned, or have had inadequate access to health care.<sup>21</sup>

Considering the conditions, prolonged confinement could cause a psychological breakdown even in a healthy person. Many people close to falling into mental health issues make suicide attempts. Every person who suffers from a mental illness deserves dignity on the same level as others. Regarding the increasing number of sane prisoners who become mentally ill after being imprisoned, the National Human Rights Commission has made the following recommendations:<sup>22</sup>

<sup>20</sup> *Supra* 17.

<sup>21</sup> Messina N (et al.), „Predictors of Prison-Based Treatment Outcomes: A comparison of Men and Women

Participants“ [2006] The American Journal of Drug and Alcohol abuse, 7-28

<sup>22</sup> *NHRC & Ors v State & Ors WP* (CrI) No 1278/04

1. All prisoners should receive psychiatric and psychological counselling for early detection of mental illness.
2. There should be collaboration between medical institutions, local psychiatric, and non-governmental organisations.
3. There should be a mental hospital affiliated with every prison.
4. Facilities for the treatment of mental disorders should be available in both central and district jails.
5. Inmates suffering from mental illness in Sub-jails should be referred to psychiatric facilities. In addition, a psychiatrist and a psychologist with training in psychiatry should be present.
6. People with mental illness who have not been charged with a crime should not be kept in prison or jail.
7. In the absence of a psychiatric centre, the nearest primary health centre should be contacted and they should be taken for observation there.
8. Mentally ill people should be provided with preventative legal assistance so that the abuse of law can be prevented and they are not thrown in prisons. Legal representation for mentally ill people must be ensured.

Though Mental Health Act 1987<sup>23</sup> was enforced in India but the enforcement was lacking behind with respect to the incarceration. With this number of legislations evolved giving rights to the prisoners. The Mental Health Care Act 2017<sup>24</sup>(MHA), intended to remove the stigma associated with mental illness, and to provide similar rights to prisoners, especially those who are vulnerable.

## I. INCARCERATED WOMEN

Prison systems and regimes are almost always designed with male prisoners in mind, from security protocols to prison architecture, healthcare facilities, family contact, work, and training and rehabilitation. Prisons for women are adapted from prisons for men. According to NCRB 2020 report, women prisons have a capacity of 50 per cent, as out of the 4,88,511 prisoners, 4,68,395 are male, while 20,046 are female.<sup>25</sup> Consequently, prisons often fail to meet the needs of female inmates, and imprisonment negatively affects them.

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<sup>23</sup> The Mental Health Act, 1987

<sup>24</sup> The Mental Healthcare Act, 2017

<sup>25</sup> National Crime Records Bureau, *Prison Statistics India 2020*, (Ministry of Home Affairs 2020)

Women offenders have different characteristics and pathways to crime than male offenders. As the prison system responds differently to them, there is a need for gender-responsive treatment and services. Compared with men, prison services are found to be inadequate in addressing their vocational and educational needs and in recognising and treating their physical and mental health problems.

Women in prison have their human rights, and fundamental dignity violated on a daily basis. Women who commit crimes often originate from socially and economically underprivileged areas of society. They are frequently young, unemployed, undereducated, and mothers of dependent children. Female prisoners have different requirements and concerns than male prisoners.

Women in prison frequently take on the main or primary caregiving duties for small children in addition to their other family obligations. Pregnant women can have a challenging time in prison, both psychologically and physically. It is possible for them to be subject to abuse inside the prison. The health needs of women prisoners differ when it comes to sexual health and reproductive health. A resolution on the special needs of female inmates was approved by the Sixth UN Congress<sup>26</sup> on “The Prevention of Crime and the Treatment of Offenders”: Women offenders are often overlooked due to their low numbers, and this inattention often prevents them from accessing the services and necessary programs, including placement in detention facilities far away from their families and society. Considering that most childcare duties are performed by women inside and outside the prison.

## I. WOMEN WITH CHILDREN

The facilities available in prison to ensure a child’s care, safety and development are often inadequate or lacking. Despite the fact that many countries have „open“ prisons for mothers with young children, children in prison rarely have regular contact with outside communities and other family members. Prison living has not been extensively studied to see how it affects a child’s development in the early years, but it’s likely that prisoners don’t receive adequate stimulation to grow up normally.<sup>27</sup> As on 31st December, 2020, there were 1,427 women

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<sup>26</sup> Criminal Justice Handbook Series, *Women and Imprisonment*: 2<sup>nd</sup> edn, with reference to United Nations Rules for the treatment of women prisoners and non-custodial measures for women offenders (The Bangkok Rules), (UN publications 2014)

<sup>27</sup> Diane Caddle, *Age limits for babies in prison : some lessons from abroad*, (1998, Home Office, London)2

prisoners with 1,628 children. There were 397 women inmates with 452 children in Uttar Pradesh, followed by 168 inmates with 187 children in Bihar, and 167 inmates with 196 children in West Bengal. Only 08 States/Union Territories do not have women inmates with children.<sup>28</sup>

Concern for their children is mostly the biggest worry women prisoners have while in prison. Due to their concern for their children, women with children experience high emotional trauma, exhibiting “danger, anxiety, sadness, deprecation, shame, guilt, decreased self-esteem and a sense of loss”.<sup>29</sup> In prisons, mothers should be offered support to develop and maintain their relationship with their children while managing the trauma of separation. Counselling and parenting classes may be included in this.

## II. CHALLENGES AND ISSUES FACED BY INCARCERATED WOMEN

The Supreme Court gave directions regarding better conditions in prisons in *Sheela Barse v. Maharashtra*.<sup>30</sup> According to Justice A.N. Mulla, The living circumstances in sub-jails are worse than in larger jails mostly due to the outdated, shoddy-maintained buildings, severe lack of resources and amenities, and the management being put in the hands of poorly paid, low-level staff with distant or indifferent supervision. The sub-facilities jails are inadequate for cooking food for inmates, hence the contract system is used to provide substandard cooked food.<sup>31</sup> The report of the All India Jail Reform Committee describes the agonies of life convicts, warning of prison riots unless their plight is ameliorated.<sup>32</sup>

In *Ramamurthy v State of Karnataka*<sup>33</sup> the Court observed that there are some major problems which afflicted the prison system in India and required immediate attention. These were:

1. Torture and ill-treatment
2. Overcrowding
3. Delay in trial
4. Neglect of health and hygiene
5. Deficiency in communication
6. Prison vices
7. Insubstantial food and inadequate clothing
8. Management of open-air prisons.; and
9. Streamlining of jail visits

<sup>28</sup> *Supra* note 25

<sup>29</sup> Emma Stanley and Stuart Byrne, „Mothers in prison: coping with separation from children“, ( Australian Institute of Criminology in conjunction with the Department for Correctional Services SA, 2000) <<https://www.hindahelps.com/media/pdf/1129/ZmuG11293377.pdf>> accessed 27 July 2022

<sup>30</sup> 1986 AIR 1773

<sup>31</sup> Government of India, *Report of All India Committee on Jail Reforms (Mulla Committee)*, (Ministry of Home Affairs 1980-83)1 <<https://www.mha.gov.in/MHA1/PrisonReforms/report.html>> accessed 27 July, 2022

<sup>32</sup> *Ibid* at 227

In this case, the Supreme Court directed the relevant authorities to take appropriate action. Mental health problems among women in prison are alarmingly high in many countries, including anxiety, depression, phobias, suicide, neuroses, and self-mutilation. According to research, women prisoners have a much higher rate of mental health problems than the general population and male inmates.<sup>34</sup> Medication is the only treatment provided for mental illness in many women's prisons. In addition to medications, there is a need for rehabilitation programmes, counselling, and specialist nursing services for prisoners suffering with mental health issues.

Here are some major challenges faced by incarcerated women that further deteriorate their mental health:

- i. Insufficient Prison staff : As per the National Model Prison Manual of 2016<sup>35</sup>, there should be one guard for every seven inmates. Additionally, executive staff, medical, welfare, educational, and others are supposed to be present in every jail to guarantee the institution's efficient working. Recording the insufficient prison staff Jharkhand has reported the highest with 22 inmates were held for each jail staff member (965 jailstaff, 22,190 inmates), followed by Uttar Pradesh.<sup>36</sup>
- ii. Accommodation, as the total number of the prisons decreased by 3.3 per cent in 2020. Whereas the actual capacity of the prisons from 2019 to 2020 have increased by 1.3 per cent.<sup>37</sup>
- iii. Sanitation and Hygiene: Basic hygiene and sanitation amenities are typically poor in prisons. One restroom and one shower cubicle should be provided for every ten offenders, according to the Prison Manual, but this is rarely the case in practise. There are often only a few. There are facilities and toilets for a disproportionately large number of prisoners.
- iv. Health: There are a variety of health needs faced by female prisoners, particularly in terms of their physical, mental and reproductive health. Compared to the general population and male prisoners, women in prison have a higher incidence of mental health problems. Women's mental and physical illnesses are closely linked to their

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<sup>33</sup> AIR 1997 SC 1739

<sup>34</sup> Rickford D, *Troubled inside Responding to the mental health needs of women in prison*, (Prison Reform Trust, 2003)

<sup>35</sup> *Supra* note 2

<sup>36</sup> *ibid.*,

<sup>37</sup> *Supra* note 1

criminal pathways.<sup>38</sup>

- v. Education: There are many education opportunities available to offenders, depending on their aptitudes and educational backgrounds. It is mandatory for young offenders (18 to 21 year olds) who are illiterate to attend school. Visits to several jails conducted by the National Human Rights Commission (NHRC) have revealed that women detainees sometimes lack access to basic educational opportunities. The availability of higher education is essentially non-existent. The availability of prison libraries is rarely accessed by female convicts, even if there are any.<sup>39</sup>
- vi. Legal Aid: It is estimated that only a small percentage of prisoners are able to access legal aid because not all prisons have legal aid cells.
- vii. Violence: There are various kinds of violence used inside the prison, it involves some kind of torture inflicted upon individual classified into physical, psychological and sexual. Sexual violence as one form of violence inflicted by convicts and authorities, has been documented nationwide. However, official reports continue to be undervalued because the apprehension of revenge among convicts compelled to remain in the same location as their perpetrators.

### III. INCARCERATED WOMEN: VICTIM OF VIOLENCE

At the moment of entry, female convicts are subjected to humiliation and abusive body searches and screening. Their comfort and privacy are ignored, and they are treated like degenerates. Both officials and other prisoners frequently sexually assault them. There have also been instances of women prisoners being recorded without their permission. From 2006 to 2010, the NHRC of India documented 39 rape instances in judicial and police custody in just five years. All of this demonstrates that male criminality is perceived as more reprehensible than female criminality. While women are treated the same as males in jails, it fails to take into account the unique systemic difficulties that women experience.<sup>40</sup>

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<sup>38</sup> Brenda van den Bergh (et al.,) *Women's Health and the Prison setting, Prisons and health*, (WHO 2014) <[https://www.euro.who.int/data/assets/pdf\\_file/0006/249207/Prisons-and-Health,-18-Womens-health-and-the-prison-setting.pdf](https://www.euro.who.int/data/assets/pdf_file/0006/249207/Prisons-and-Health,-18-Womens-health-and-the-prison-setting.pdf)> accessed 10 June, 2022

<sup>39</sup>Government of India, *Women in Prison-India 2018*, (Ministry of Women and Child Development 2018), <[https://wcd.nic.in/sites/default/files/Prisonper cent20Reportper cent20Compiled\\_0.pdf](https://wcd.nic.in/sites/default/files/Prisonper cent20Reportper cent20Compiled_0.pdf)> accessed 10 June, 2022

<sup>40</sup> Umang Aggarwal, „Indian Prisons Need Gender-Sensitive Reform as Women Inmates Face Double Marginalisation“, (Firstpost), <<https://www.firstpost.com/opinion/indian-prisons-need-gender-sensitive-reform-as-women-inmates-face-double-marginalisation-10837981.html>> accessed 26 June, 2022

Sexual victimisation by the staff or the other inmates is matter of concern. Prisons are gender segregated so sexual victimisation can be between same sex also. Rape, and other forms of sexual abuse whether committed at home, in community or inside the prison it has a deeper impact and larger consequences not only physically but mentally too. Despite the individuality of each victim's experience, there are many typical responses, including as dread, shame, wrath, severe anxiety, nightmares, and flashbacks.

There are many factors that make the symptoms of sexual assault worse for prison inmates, such as a lack of privacy, a lack of control over their circumstances, and often the continued presence of the individual who sexually assaulted them in prison. Female prisoners may be forced to obtain abortions if they are at danger for pregnancy. Even though it is important to provide prisoners with immediate rape crisis counselling and medical care, including post-rape treatment to prevent sexually transmitted diseases (STDs), despite the fact that these services can be very beneficial, there are fewer prisoners who have access to these services. As in 1983, the definition of custodial rape was expanded to include rapes committed by any public servant in his custody, rapes committed by hospital management or staff on women at the hospital, rapes committed by jail authorities in police stations, women's homes, children's homes, rapes committed by police officers near the police station and rapes committed by members of the armed forces near their deployment areas.

After *Sheela Devi v. State of Haryana and Anr*<sup>41</sup> amendment was brought under **section 376C IPC** that deals with the "Sexual intercourse by a person in authority" known as custodial rape not amounting to rape under such cases the consent of the victim is obtained under some compelling circumstances. As the person in authority forces undue influence upon the victim. Though the custodial rape is a broader concept but limiting its scope it with rape by police officials and staff during incarceration upon women for better understanding of the research paper.

*A Convict Prisoner In The Central Prisoner v State of Kerala*<sup>42</sup> in this case, a convicted prisoner detained in Thiruvananthapuram Central Jail filed the petition in the High Court of Kerala complaining against the sub-human conditions that prevailed inside the prison, and presence of homosexuality as well as the other forms of physical assault in the prison. The court observed that "with imprisonment, a radical transformation comes over a prisoner,

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<sup>41</sup> Criminal Revision No.4220 of 2014

<sup>42</sup> 1993 Cri LJ 3242

which can be described as prisonisation. He loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity and autonomy of personal life.” The court further observed that while prison life is not like that in the free world, the human dignity of the prisoner must be maintained at all times. A person who is imprisoned may lose some aspects of their lives, but they do not cease to exist, so they are entitled to all of the rights he deserves and that are based on human dignity and the circumstances in which they occur.

In *State of Maharashtra v. Prabhakar Pandurang Sanzgir*<sup>43</sup>, the Supreme Court ruled that a person’s basic rights cannot be violated just because they are in custody and that such restrictions cannot be made so severe as to violate the detained person’s fundamental rights. Moreover, the court held that all these liberties are preserved for every prisoner, with the exception of those that must be forfeited due to incarceration.

## **I. HUMAN RIGHTS STANDARDS AND PROTECTION OF MENTALLY ILL INCARCERATED WOMEN: LEGAL FRAMEWORK**

Recently in Tamil Nadu an incident was reported in Muthiapuram village where women was taken into custody without any FIR or formal complaint for questioning in case related to robbery alleged to have robbed jewellery wherein she was tortured in the custody by four officials inclusive of three female and one male.<sup>44</sup> The violence doesn’t starts inside the prison but it starts from outside. In accordance with Article 14 of the Indian Constitution<sup>45</sup>, everyone has a right to equality and equal protection under the law. Therefore, inmates have individual rights. If any police misconduct is deemed to have violated prisoner’s rights, the judiciary should be alerted to the situation of violation of rights. It further provides for the right to meet with friends, family, and attorneys. Such rights should be fair and non-arbitrary. Even prison rules acknowledge the Prisoners have the right to reasonable access with legal counsel as necessary. The provisions of articles 14 and 21 also include a right to free legal assistance.

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<sup>43</sup> 1966 SCR (1) 702

<sup>44</sup> India Today, *Tamil Nadu woman tortured in custody over allegations of theft, 4 police officials suspended*, (May 19, 2022), <<https://www.indiatoday.in/india/story/tamil-nadu-woman-tortured-custody-allegations-theft-police-officials-suspended-1951411>>accessed 19 May, 2022

<sup>45</sup> The Constitution of India, 1950, art. 14

One of the most significant rights guaranteed by the constitution is the right to life under Article 21<sup>46</sup>, which also ensures the right to personal liberty and forbids any form of inhumane, cruel, or degrading treatment of anyone, whether they are a citizen or a foreigner. Article 21 safeguarding life and liberty states, “*No person shall be deprived of his life or personal liberty except accordance to procedure established by law*”<sup>47</sup>. In *Prem Shankar v. Delhi Administration*,<sup>48</sup> A person should only be handcuffed if eluding police control is a clear and present danger. Further it was held that handcuffing is deemed unreasonable as violative of Article 21 and prima facie inhumane.<sup>49</sup>

The efficacy of laws and principles are yet to be measured through proper enforcement. General principles, treaties between the states, and national and international standards are formulated to protect the prisoners’ interests, promote human rights at all levels, and prevent human rights violations. These are applied explicitly to women prisoners as well. Some of the common rights protected under national and international standards are:

- i. Search, and examination of the women prisoner must be carried out by female staff only
- ii. Punishment for the custodial rape
- iii. Right to live separately from the male prisoners
- iv. Right to health
- v. Right to free from abuse
- vi. Right to hygiene, food, shelter, reading and medical facilities.
- vii. Right to bail if the women prisoner is pregnant
- viii. Women institution shall have facilities for pre and post-natal treatment.
- ix. Right to legal aid
- x. Right to Psychological or Psychiatric help
- xi. Right to medical aid

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<sup>46</sup> *ibid*, art. 21

<sup>47</sup> *ibid*.,

<sup>48</sup> AIR 1980 SC 1535

<sup>49</sup> Dr. Deepak Kumar, „Constitutional Human Rights of Prisoners in India: An Analysis“, [2015] 3:21SRJIS

It is recognised by human rights laws that inmates are particularly vulnerable to abuse and they are provided with extra protection. The UN Human Rights Committee has upheld nations' "positive obligation" to safeguard the rights of people whose vulnerability comes from their deprivation of freedom.<sup>50</sup> Article 5 of Universal Declaration of Human Rights (UDHR)<sup>51</sup> provides that "no one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment". Similarly, protection has been provided under article 7<sup>52</sup> of International Covenant on civil and political rights (ICCPR) following the United Nation Charter. Regardless of a person's legal situation, the UDHR further upholds their right to health. States are required to guarantee "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"<sup>53</sup> and, in order to achieve this objective International Covenant on Economic, Social, and Cultural Rights (ICESCR),<sup>54</sup> provides conditions for assurance of all medical attention and medical services in the event of sickness.

There has been less discussion about prisoners in UDHR, for safeguarding the treatment of prisoners the Nelson Mandela Rules, which are the minimum standards set by the UN for the treatment of prisoners,<sup>55</sup> were adopted by the general assembly, which included registration concerning her identity<sup>56</sup>, personal hygiene<sup>57</sup>, clothing and bedding<sup>58</sup>, food<sup>59</sup>, exercise and sport<sup>60</sup>, medical services<sup>61</sup>, discipline and punishment<sup>62</sup>, instruments of restraint<sup>63</sup>, information to and complaints by prisoners<sup>64</sup>, contact with the outside world<sup>65</sup>, books<sup>66</sup>,

<sup>50</sup>Human Rights Watch, *Mental Illness, Human rights, and US Prisons*, [2009]<[https://www.hrw.org/news/2009/09/22/mental-illness-human-rights-and-us-prisons?gclid=CjwKCAjwtp2bBhAGEiwAOZZTuHheah9SKMCLUYzux917ZJdOu8rM-qu9F2kecN\\_nXjpoqpizizeEWRoC5SwQAvD\\_BwE](https://www.hrw.org/news/2009/09/22/mental-illness-human-rights-and-us-prisons?gclid=CjwKCAjwtp2bBhAGEiwAOZZTuHheah9SKMCLUYzux917ZJdOu8rM-qu9F2kecN_nXjpoqpizizeEWRoC5SwQAvD_BwE)> accessed 31 July, 2022

<sup>51</sup> The Universal Declaration of Human Rights, 1948, art.5

<sup>52</sup> The International Covenant on Civil and Political Rights, 1966, art.7

<sup>53</sup> *Supra* Note 43., art. 25

<sup>54</sup> The International Covenant on Economic, Social and Cultural Rights, 1966

<sup>55</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), 2016

<sup>56</sup> *ibid.*, art. 7

<sup>57</sup> *Supra* Note 55., art. 15

<sup>58</sup> *Supra* Note 55., art. 17

<sup>59</sup> *Supra* Note 55., art. 20

<sup>60</sup> *Supra* Note 55., art. 21

<sup>61</sup> *Supra* Note 55., art. 22

<sup>62</sup> *Supra* Note 55., art. 27

<sup>63</sup> *Supra* Note 55., art. 33

<sup>64</sup> *Supra* Note 55., art. 35

<sup>65</sup> *Supra* Note 55., art. 37

<sup>66</sup> *Supra* Note 55., art. 40

religion<sup>67</sup>, retention of prisoners' property<sup>68</sup>, notification of death<sup>69</sup>, illness<sup>70</sup>, transfer<sup>71</sup>, and removal of prisoners<sup>72</sup>, among other things that are more important in today's world with increase in prison population.

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>73</sup> establishes a system of regular visits to be undertaken where people are deprived of their liberty by national and international bodies, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>74</sup> applies to the protection of all persons' human rights under any form of detention or imprisonment. Principle 9 provides that prisoners shall have access to health services without any discrimination<sup>75</sup>. Similar is the Principle 20, Moreover-

Principle 3 provides that there shall be no restriction upon human rights of person when he/she is in detention or imprisonment in accordance with law or custom recognised on the pretext that this Body of Principles does not recognise such rights or that it recognises them to a lesser extent.<sup>76</sup>

Under principle 4, all measures affecting a person's human rights while in detention or imprisonment shall be controlled by a judicial or other authority or be under its control.<sup>77</sup> Apart from this, there are other principles protecting the above-stated rights of mentally ill incarcerated women with several other legislative enforcement, conventions, regulations, principles, and treaties for creating liveable conditions for enabling prisoners to undertake meaningful life after they are released. The Prisoner must have remunerated employment which would facilitate their reintegration into the labour force of the state, and allow them to contribute to their own financial needs and support their families.

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<sup>67</sup> *Supra* Note 55., art. 41

<sup>68</sup> *Supra* Note 55., art. 43

<sup>69</sup> *Supra* Note 55, art. 44

<sup>70</sup> *Ibid.*,

<sup>71</sup> *Ibid.*,

<sup>72</sup> *Supra* Note 55., art. 45

<sup>73</sup> The Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 2003

<sup>74</sup> The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988

<sup>75</sup> *Ibid.*, Principle 9

<sup>76</sup> *Supra* note 72, Principle 3

<sup>77</sup> *Supra* note 72, Principle 4

There are some issues that needs to be kept in mind of the policy makers. Women prisoners need to be empowered through vocational training and information should be provided of various organisations so that they can approach for further approach after release from the prison so that they can be independent. Female convicts" welfare and reformation must be prioritised. Consequently, female criminals must be protected from exploitation while in prison. A number of rulings have been issued by the Hon"ble Supreme Court concerning prison administration. Court has established three major guidelines:

- i. A person who is incarcerated does not cease to exist.
- ii. All human rights are guaranteed to prisoners within the confines of incarceration.
- iii. There is no reason to make the pain that is already present in the process worse of imprisonment.

It was observed by the Supreme Court in *Veena Sethi v. State of Bihar*, that mental health institutions must be adequately staffed. Furthermore, it stated that incarcerating persons of mental disorders for safe custody is neither healthy nor desirable.<sup>78</sup>

In May 2022, Supreme Court in *Manoj v. State of Madhya Pradesh*<sup>79</sup> the guidelines were issued by the court to consider the mitigating factors at the trial stage to evaluate the progress of the accused towards reformation.

Intervention must starts from the moment prisoner enter the prison environment.

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<sup>78</sup> *Veena Sethi v. State of Bihar* (1982) 2 SCC 583

<sup>79</sup> Criminal Appeal Nos. 248-250 of 2015

## **II. Conclusion**

Human Rights instruments have worked many years for the protection of those who are vulnerable. Mentally ill incarcerated women as a victim of prison atrocities are at the verge as their rights are implicated. Prisoners were never designed for the mentally ill person. Many prisoners now have mental illness as the general population does, including serious conditions including schizophrenia, bipolar disorder, and profound depression and anxiety. Mental Health treatment of these prisoners at proper time can help them to recover their illness simultaneously the non-use of violence inside the prison and providing them all basic human right. Incarcerated women struggle hard to maintain their emotional equilibrium and protect their dignity as the prisons are overcrowded, unhealthy, lack of sanitation, lack of medical and legal aid, no contact with the family or friends, and unsuitable conditions for pregnant women and several other factors. With these conditions they are more likely to be victimised by the other inmates and employees. Rapid restoration of these prisoners who are released from the prison into the community is required by the state. And proper address of their problem while they are incarcerated to ensure continuity of care and enforcement of their legal right.