

enacted, as contemplated under Article 44 of the Constitution.

The legal right of joint matrimonial property may be introduced to enable the spouse to have equal rights over the property acquired by the partner after marriage to compensate for sacrifices made in the interests of matrimonial life. It may also be suggested that Section 497 of IPC may be dropped or amended to provide for the equal status of women.

Since, in Andhra Pradesh, 2/3rd of the marginal workers are women, economic legislation to protect their interests and measures to promote their incomes will directly empower women.

IX. Outlook for the Future

A major problem revealed by the foregoing analysis is the serious rift between Law and social reality. Social acceptance of laws leads to societal self-regulation that

raises the efficiency of legislation and reduces the pressure on enforcement. This is specially true of crimes against women, such as sexual harassment, domestic violence and dowry harassment.

Closing the gap between social practice and the judicial process requires a fresh look at methods and measures to modernise social attitudes to women and revitalise societal self-regulation of gender crimes. Spreading awareness through school curricula, and informal campaigns with the help of NGOs may help in this regard. Along with this, lawmakers, the judiciary and enforcement officers need to be sensitised to gender related issues. Awareness alone, however, cannot bridge the gap between social practice and Law. There is, unfortunately, no substitute for the empowerment of the victim and/or potential victim in discouraging offences or penalising the offenders. Empowering women is ultimately the society's prerogative, and raises the wider question of social change.

WOMEN PRISONERS AND CUSTODIAL JUSTICE

(A Study with Special Reference to Andhra Pradesh)

By

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The study on the criminality of women is neglected by both criminologists and sociologists. Various reasons are cited for this. One reason is sociological where women are not treated as a separate entity. Secondly, the lesser number of crimes committed by women and their low percentage in prison population. These became the bases for continued neglect and discrimination against women at all stages of

criminal correctional process. Third reason perhaps is the lack of interest among sociologists, psychologists and criminologists on research issues relating to women.

This lack of concern for women can be noticed in various legislations relating to women in custody. Though Indian Constitution provided safeguards to the accused in general, there are no specific

provisions for women accused. The Indian Penal Code 1860, the Criminal Procedure Code, 1973 collectively have a negligible protective provisions for women in custody. The Prisoners Act, 1894, The Prisoners Act, 1900. The Transfer of Prisoners Act, 1950, Prisoners (Attendance in Courts) Act, 1955 have also failed in taking into account the vulnerability of women and their special needs.

The social and economic situation of a section of women has changed more drastically in 20th century. Women's liberation paved the way for better social status. But at the same time it has its negative impact through the increased women criminality. Growing participation of women in various fields has also contributed to the increase in their participation of crime too. There are several states in India where criminality among women has increased over the recent years. However, the corresponding work on women as criminals or women under custody has not received the needed attention. Over the years, however, the custodial offences against women are reported at regular frequency from different parts of the country.

Since Andhra Pradesh is one of the States in India, where the number of women criminals has increased and also custodial offences reported, it became all the more necessary to undertake a critical study of the existing legal provisions, their systematic violation and the ways and means, legally, procedurally, to plug the loopholes in the treatment of women prisoners at various stages of accusation, conviction and confinement.

The present study is broadly aimed at understanding the legal rights of women in both penal and non-penal custodies *viz.*, criminal, correctional, social welfare and medical.

The study also involves the operation of the criminal justice system at various stages

viz., the police, the Magistrate, the prison and other custodial staff and the protection and aftercare officers.

The thesis includes theoretical as well as empirical investigation. The theoretical study includes a critical analysis of the provisions in the Cr.P.C. and I.P.C. meant for safety and security of women in custody.

The empirical part of the study deals with the assessment of actual situations which women in custody are experiencing in the State of Andhra Pradesh. The two State jails for women located at Hyderabad and Rajahmundry and women enclosures in other central prisons in the State are visited and both remand and convicted prisoners are interviewed on the basis of a prepared interview schedule. Jail authorities are also interviewed.

The data thus collected is analysed, discussed and presented through **Eight chapters**.

In the introductory **First Chapter**, the criminality of women as a subject and the evolution is discussed in brief. The need for the present study, in the context of custodial justice to women prisoners, scope and objectives of the present study, the research problem, the hypotheses formulated and methodology followed for present investigation are detailed.

The **Second Chapter**, after the introductory first chapter, deals with international and national legal regimen regarding the persons in custody. In order to understand the evolution of the concept of protection of persons under any form of detention or imprisonment, the attempts made on different occasions in the international fora are presented in greater detail. Starting from the genesis of the now famous Universal Declaration of Human Rights (1948) of United Nations to the Standard Minimum Rules for Non-Custodial Measures (1990)

through European Convention (1950), Medical Ethics for Protection of Prisoners and Detainers against Torture (1982), Basic Principles for the Treatment of Prisoners (1990) are detailed. The principle that a prisoner enjoys the residual human rights is a universally accepted norm. So the principles involved in protecting human rights and the procedure available for the treatment of prisoners in general have been listed. The attempts made by the United Nations to protect the prisoners from torture, other cruel, inhuman or degrading treatment or punishment and to bring about qualitative changes in the treatment of prisoners with the help of various Declarations are presented. The relevant efforts made by the International bodies for the elimination of discrimination against women and especially women as prisoners are discussed. In the second part of the chapter, the rights of prisoners under the Indian Constitution as enunciated in various Articles are discussed. Special attention is paid to the position of women under the Indian law.

The **Third Chapter** deals with the rights of women prisoners under substantive criminal law as well as procedural law. The discussion includes the listing of the original provisions for protecting women in custody and amendments made from time to time to plug the loopholes, as and when the custodial rapes or sexual abuses not amounting to rape are reported. In the second part of the discussion, the provisions available for honouring the womanhood and dignity of women, even when they are suspected of committing a crime, at the time of arrest, search of the place and person, detention in police lock-up, police remand, examination of women witnesses are presented Sectionwise. Some of the reported violations and the judicial interventions to prevent recurrence of such violations are also discussed. The relevant directions issued by the Supreme Court, the recommendations of the National Expert Committee on Women

Prisoners (1986-87) and National Commission for Women (1993) have been presented. The concerted efforts of the academicians, public spirited activists, judiciary are analysed and the natural evolution of custodial justice is projected. But still, at the end, it is felt that protective provisions for women in custody, particularly in police custody are negligible. This is because of the executive inaction over the recommendations of various committees.

In **Chapter Four**, the rights of women prisoners under Prisons Act, 1894 and under Andhra Pradesh Prisons Rules, 1979 are dealt within greater detail. The evolution of concept of prison and treatment of a prisoner, through Prisoners Act, 1900, the Transfer of Prisoners Act, 1950 and the Prisoners (Attendance in Courts) Act, 1955 are analysed. The absence of any special provisions in those Acts for protecting the women prisoners, except those regarding the separation of women prisoners from male prisoners and search of female prisoners by a matron at the time of admission in Prisons Act, 1894, are highlighted. The rights enjoyed by the women prisoners in Andhra Pradesh through the Prisons Rules (Jail Manual of A.P. 1979) are discussed in detail. The progressive features of the A.P. Jail Manual are specially mentioned. This Manual has provision for separate treatment of undertrial prisoners and their categorization as ordinary or special based on education and social background; starting from the admission into the prison, the women are to be treated separately. Now, the creation of exclusive State jails for women prisoners are to be fully staffed by women. The other amenities to be provided in these prisons are also discussed in detail. The All India Committee on Jail reforms headed by Justice *Mulla*, the National Expert Committee on Women Prisoners headed by former Supreme Court Justice *Krishna Iyer*, National Commission for Women, a statutory committee, have played their own role in

bettering the conditions of women prisoners and all of them are discussed to the extent they are relevant for the study. This chapter ends with a note on grey areas in the A.P. Jail Manual. The failure of the Legislature in passing of Indian Prison Bill, 1996; the Prison Administration and Treatment of Prisoners Bill, 1998 and Prison Management Bill, 1998, all of which were drafted by National Human Rights Commission has also been dealt with in this chapter.

Women held in penal custodies deserve a different treatment while in such custody. The women prisoners in non-penal custody are also entitled to certain rights and those rights are elucidated in the **Fifth Chapter**. There are special provisions in the procedure of arresting women under Immoral Traffic (Prevention) Act, coupled with I.P.C. and Cr.P.C. These provisions provide an opportunity for reformation and rehabilitation of the victims of 'flesh trade' while in protective homes specially instituted by the Governments. Their mode of detention, rules governing the running of such 'homes' and recommendations made for the improvement of the conditions in those 'homes' are all presented in greater detail. Women are also held under mental health custody. Some depressed prisoners are temporarily transferred to mental health custody. Mental Health Act, 1987 took care of those under mental health custody. The protective provisions for mentally ill persons as mentioned in the Act are presented and the chapter ends with a mention of the areas where the Act is deficient and also with the recommendations of the National Expert Committee.

The **Sixth Chapter** deals with the judicial contribution in the administration of custodial justice in India. The judgments referred in this chapter include those delivered by both High Courts and Supreme Court in the independent India. The main objective of this chapter is to present the progressive outlook of the judiciary in this country. There

is no issue which is not covered by the judiciary in offering needed protection for the people in custody. For example, the judgments barred the handcuffing of accused, fettering of the prisoners *etc.*, and gave the needed dignity to the people under custody. The concept of legal aid to the people under custody, the liberalized bail for women and freedom to meet friends and legal Counsel *etc.*, are made possible only through judicial intervention. The women in penal custody also received needed protection through judicial guidelines. The judicial action went a step further by awarding monetary compensation to the victims of atrocious treatment in custody. This concept of compensation has caught up well. The procedures, guidelines for the treatment of women in various stages of custody are discussed with reference to the actual incidences of custodial offences and relevant cases. All these issues are documented in this chapter with relevant case laws.

Chapter Seven contains the details of methodology employed to study the conditions in the State jails for women in Andhra Pradesh and the treatment of women prisoners in those jails. The data on the convicts' social, academic, economic backgrounds, the nature of crimes for which they are convicted are presented in this chapter. The experiences of the remand prisoners in police custody, judicial custody and prison custody are analysed in this chapter. The Andhra Pradesh Prisons Rules, 1979 (popularly called as Andhra Pradesh Jail Manual) and their observance or non-observance by the Jail Administrators is another aspect of the study incorporated in this chapter.

The interviews conducted with both remand and convict prisoners revealed that police custody is the most feared custody. It is in this custody the norms are mostly violated. The women are taken into custody even in the night, not informed of their

arrest either to their relatives nor to the nearest legal aid committee as required under law. It is revealed that none of the women are produced before the Magistrate within 24 hours of their arrest. The Magistrate routinely ordered remand without making formal enquiry about her treatment in police custody. Women are not given health check up facility and also not offered bail, though the judicial officer is duty bound to offer. As remand prisoners they remained in jail beyond the stipulated period because of their ignorance, illiteracy and poor economic status.

The women expressed more safety in the prison custody since women in custody are placed in jails administered by women staff. The creation of separate State jails for Women, separate enclosures for women in other jails has paved the way for satisfactory conditions for women prisoners. Some of the innovative methods recently adopted by A.P. Prison authorities such as the video linkage of jail and Court for avoiding the delay in production of undertrial prisoners and some of the proposed innovative community service as an alternative punishment to the jail term, creation of Prison

Development Board *etc.*, are also discussed in detail in this Chapter.

The conditions in rescue homes and State homes are also studied from the custodial justice angle. The facilities and deficiencies in these homes are discussed in this chapter. There is only one rescue home in the whole State of Andhra Pradesh even that home is located in rented house and conditions are less than adequate. There is no proper security for the house.

Conditions in mental hospitals are scrutinized using the rules under Mental Health Act. The women under mental health custody are interviewed to the extent possible and observations are made based on their answers in this chapter. Mental health custody conditions though not upto the mark, it is found, that a new set up with better facilities is coming up at Visakhapatnam.

The **last chapter** is devoted to a fair summary of the whole study, the findings of the study and appropriate suggestions for making the women more safe and dignified while in custody of the any sort.

IDENTITY OF PARTIES BY PHOTO SYSTEM IN COURTS ALSO

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The Courts are granting bails to accused persons after satisfying the sureties offered by the accused. The sureties have to produce their ration cards with photos on them. The Court after seeing the photos and the sureties and after satisfying that the sureties are the same person as in the photos on the ration card are granting bails to accused. This procedure is insisted and followed to avoid

impersonation and to take steps to secure the person of the accused through the sureties.

Now a days where the litigant public are educated through literacy camps organised by the Courts, became more intelligent and they are not hesitating to misuse their intelligence by producing some other persons