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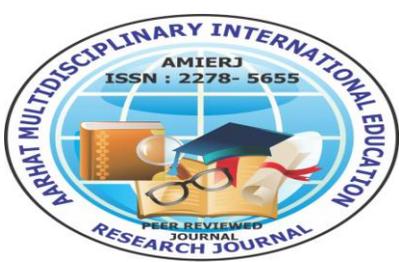
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**HUMAN RIGHTS WOMEN PRISONERS AND PRISON REFORMS IN INDIA- A
STUDY**

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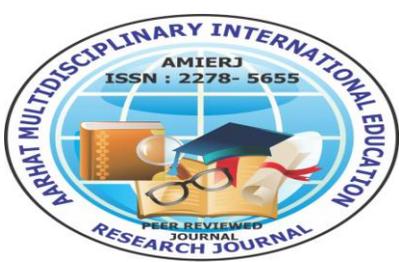
INTRODUCTION:

Human rights have been described as those minimal rights that every individual must have by virtue of his being ‘a member of human family’ irrespective of any other consideration. They are based on mankind’s demand for a life in which the inherent dignity of a human being will receive respect and protection. According to western political and philosophical thinking human rights are innate in individuals and are intrinsic factors in the quality of the human persons. They are to quote the words of Present Jefferson, “Inherent and Inalienable rights of man”, and hence a state that violates them in its laws and its actions breaches one of the very prerequisites of civil co – existence between states and may be legitimately brought to account.

INTERNATIONAL INSTRUMENTS:

The first documentary use of the expression ‘human rights’ could be seen in the character of the United Nations which declared promotion and fostering of human rights as one of the basic goals of the United Nations. The charter of United Nations does not define the contents of human rights. The framers of the charter left the task to the organization itself. The International Bill of Human rights which was subsequently drawn up comprises:

1. Universal Declaration of the Human rights (1948).



2. International Covenant of Economic, Social and Cultural Rights (1966).
3. International Covenant of Civil and Political Rights (1966).
4. Optional Protocol providing the rights for individual petition.

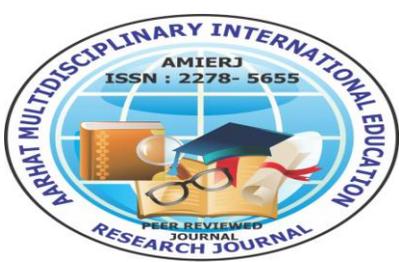
They incorporate a large number of rights which are now being accepted by the international community as human rights.

In the post-cold war, the United States and many western countries are laying increasing emphasis on human rights in their foreign policies. This western emphasis on human rights has significantly affected the tone of post-cold war international relations. For developing countries, the western assistance is getting linked with observance of the human rights. In 1974 the United States government passed the Foreign Assistance Act, of which section 116 was designed to prohibit or restrict assistance to any government “which engages in inconsistent pattern of gross violation of internationally recognized human rights”. The United States house of representative passed the Burton Bill in June, 1992, cutting 24 million dollars of developing assistance to third world countries including India on grounds of ‘poor human right records’.

The Clinton administration now has made the human rights issue as one of the corner stone’s of its foreign policy. “Protecting human rights and promoting democracy”, says John Shattuck, U.S. Assistant secretary for democracy, Human Rights and Labour, “Are integral elements of the U.S. foreign policy because they serve long – term interests of the U.S, its trading partners and allies, and indeed, the entire international community”.

PRISON REFORMS:

In it’ annual report (1993 – 94) the national human rights commission expressed deep concern about appalling conditions in Indian Jails. There are problems of overcrowding, lack of sanitation, poor medical facilities, inadequate light and diet in most



of the jails of the country. Further there is an unconscious delay in the disposal of cases for various reasons and complete mismanagement in the administration of jails.

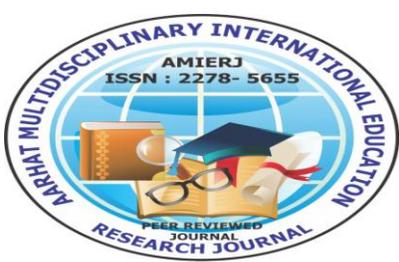
During the year (1994 - 95) the commission visited prisons in different Parts of the country and suggested corrective measures by the state governments in whose jurisdiction the jails are located. Visiting the jails is one of the important statutory functions of the commission. Section 12(c) of the protection of Human Rights Act, 1993, authorizes the commission to “visit under intimation of the state government any jail or any other institution”.

Under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon”.

The commission during its visits to different Jails noted with dismay the congestion and maladministration in most of the jails. In the newly constructed jail in Patna, the management was denounced as brutal uncaring and corrupt. However a few jails like the central jail in Vellore were found well – kept and fairly well administered. But by and large it is disappearing. Hence the commission has strongly felt that the prison system in the country is in dire need of reform.

The prison administration in the country now is largely governed by the Prison Act, 1894. The objectives and policies reflected the Registration formulated during the British regime have now become outdated and have been obstructing proper development of prison administration on modern lines in the country. It may be recalled that the Indian Jails Committee of 1919 – 20 with Alexander Cardew as its chairman made a comprehensive enquiry into the state of prisons in the country and identified reformation and rehabilitation of prisoners as the main objectives of punishment.

This committee laid stress on proper classification and separation on proper classification and separation of the inmates of prison, healthy reformatory influences, expert superintendence and selection of proper and responsible, Jail staff.



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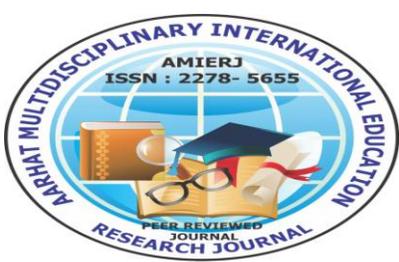
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After independence, a number of jail reform committees and commissions were set up in different states with a view to humanizing condition in prisons, but the Prisons Act, 1894, remained substantially unchanged. Some minor amendments of the Act was made by some states. The prison administration in India thus remains totally out of tune with modern enological thinking.

The All India Jail Manual Committee (1957 - 59) set up by the government of India made various recommendations pertaining to prison manual which was circulated to all states for the purpose of revision of their jail manuals. The sad fact is however that it have remained unchanged and unrevised. Ex., Even 47 years after independence. Bihar still has the same Jail Manual prepared by the British Civilian J.A. Hubback in 1927. Such attitude was criticized by the 'Supreme Court' (in the well - known case of Sunil Batra V. Delhi Administration.) Again there are wide variations in prison rules and regulation in various states.

The All India Committee on Jail Reforms (1980 - 83) under the chairmanship of Justice A.N. Mulla made a thorough – going enquiry into prison conditions and submitted a number of concrete recommendations for Jail reforms, which have remained mostly unimplemented. Worse still is no attempt has been made to implement even some of them “Ministers, now or before, who were no strangers to prison torments, have done so little to reform conditions in prisons”. Was the observation of the Supreme Court of India in the Case of Hiralal V. State of Bihar (AIR 1977 SC 2236).

Another frequent complaint one hears from prisoners is regarding the quality and quantity of food served to them. In the restricted environment of prisons, where the prisoners cannot get food of the choice and liking, diet assumes special importance. Diet of prisoners is regulated on the basis of different scales prescribed in the state jail manuals. During visits to different prisons, the present writer has noticed that the arrangements regarding preparation and distribution of food, cleanliness of eating places, management of kitchens are far from being satisfactory. The Mullah Committee in its report has been constrained to remark that in “an era when careful attention is paid even



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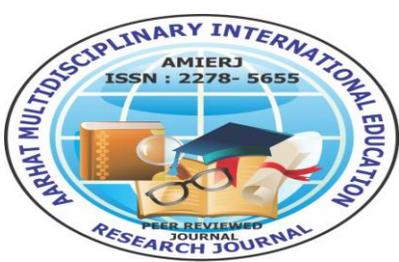
to the feeding of dairy cattle, prison kitchen and diet system have remained in utter neglect”.

TRAINING:

The present system and arrangements of training of the prison staff remain unsatisfactory. Most of the prison officers even in the ranks of Superintendents of jails are not cognizant of modern trends in penology and contemporary practices abroad for reclamation and rehabilitation for prisoners. The jail staff at lower levels do receive some training for performance of their custodian duties but remain unexposed to the current developments in the field of corrections. Some of them get coarsened and brutalized by prevailing practices in jails. The UN Expert Dr. Walter Reckless, who in the fifties at the invitation of the government of India had visited India and given a report for prison development on contemporary lines pointed that the “great school of experience of seniors from which the new appointees pick up work can do immense harm to the untrained new entrants”. They often imbibe wrong attitudes and learn questionable practices.

Indeed, prisons constitute a critical area of human rights concern. A person in custody in any civilized society cannot be reduced to the status of a non – person and hence the prison system must offer conditions that are compatible with human dignity and conducive to social mainstreaming. Persons in custody are entitled to all human rights, as the Supreme Court has laid down, other than those curtailed by the process of incarceration itself.

The National Human Rights Commission remains in constant touch with the State authorities for improvement of conditions in prisons. The Chairman of the National Human Rights Commission in a letter addressed to all Chief Ministers and Lt. Governors invited their attention to the distressing practice of prisoners languishing in jails beyond the dates for their release often because of the callous indifference and negligence of the authorities and referred to a decision of the Supreme Court in the case of Rudolf Shah

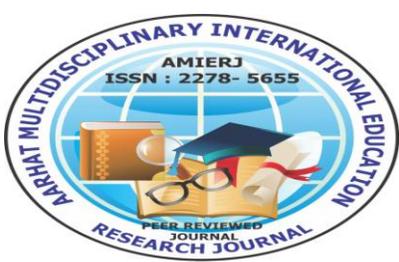


(1983 SC 141) that compensation has to be paid by the State Government to persons detained unlawfully beyond the dates for their release. He recommended setting up of a high – power Review Committee in each State to review the cases of a prisoners who may be suffering the same tragic fate of Rudolf Shah.

Recently a national conference on ‘Human Rights in Prisons’ was convened by NHRC which was attended by the Home Secretaries and Inspectors General of Prisons of all States. A core Committee has been formed after the conference to prepare the draft of a model Prison Bill which will then be circulated to State Governments. A national consensus has to be evolved on the objective, scope, and specific provisions to be incorporated in the law. Absence of a progressive legislation pertaining to prison administration stands as a roadblock to development of prisons in this country on modern scientific lines, once a model legislation on the subject is finalized for the country as a whole, revision of State Prison manuals would be possible with in a time-frame.

WOMEN PRISONERS:

The total number of male prisoners in India in 201, as per statistics collected by the Regional Institute of Correctional Administration, Vellore, was 470407 as against the total of 20738 women prisoners. Female prisoners thus constitute a small proportion of the total prison population of the country. Comparative national studies in 1960 estimated that prison population consisted of 2 percent women in Japan, about 4 percent in Germany and about 5.9 percent in Argentina. While in 1820, women constituted about 9 percent of the prisoners in USA, in 1980s, it was about 4 percent. It can thus be seen that even in countries of different political and economic structures, women invariably remain in small minority in prisons. This relatively low proportion of women in prison population weaknesses, and ambiguity regarding their public and legal responsibilities. Unfortunately this minority status of women in prison tends to reinforce their lost status.



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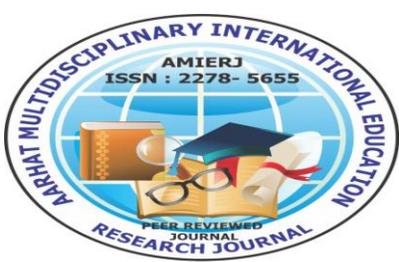
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Women prisoners more than their male counterparts are prisoners of their sex with special problems not faced by men in prison. Since women comprise a small percentage of the prison population, their problems are often overlooked. Their problems are, however, severe and deserve special attention.

In India, as early as in 1919 – 20, the Indians Jails Committee had recommended that structurally separate jails or at least separate enclosures for women prisoners should be so constructed that the ‘female prisoners or lady visitors entering the jail should be able to reach the female yard without coming under the observation of male prisoners’. Unfortunately, condition in this respect has registered very little improvement. In most of the jails of the country, whether central prisons, district prisons or sub-jails, women prisoners have to walk through men’s sections and undergo very humiliating experience often – times.

The Indian Jail Committee further argued strongly in favour of creating one or two institutions for convicted women prisoners in each State and concentrate women offenders from their home towns was a lesser evil than allowing them to languish in miserable conditions in some corners of the jails in their own districts. The Committee stressed the need for proper classification of prisoners and separating female adolescents from old convicted prisoners, prostitutes and procurers from women, who have lived hither a respectable life. Unfortunately, state governments have paid scant attention to these recommendations.

At present in India, there are 922 jails of which only 14 are exclusive prisons for women. Women prisoners in many jails are confined in enclosures, the keys of which are held by the male staffs. They are often exploited and suffer many odd problems. Many complaints of sexual abuse (some of them substantiated during enquires) have also been received in the National Human Rights Commission. “It is the small number of women in Prisons” says the All India Committee on Jail Reforms 1980 – 83 (better known as the Mullah Committee), “which in our view is responsible for their needs being



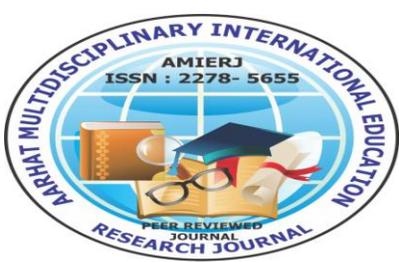
neglected. The position of these women scattered in small clusters in jails, is highly vulnerable”.

Most of the women prisoners in Indian jails come from poor and disadvantaged sections of the society. ‘Women in Prison’, to quote the words of an eminent sociologist, “are the disadvantaged losers in our complex and competitive society”. Women have the added problem, in many instances, of responsibility for their dependents and they also do not have often the skill for legal employment after serving the term of imprisonment.

Training and treatment of women prisoners is often badly neglected. ‘During its visit to different jails in the country, the National human Rights Commission has noted with dismay that in most of the jails there is no scheme for gainful vocational training, and not even elementary education for women prisoners. Further, women prisoners suffer from unhealthy living conditions, exploitation and separation from their families. In a ‘Nair Bandy Nike tan’ of Uttar Pradesh, a number of women prisoners undergoing long periods of imprisonment told me with great anguish that they have not heard anything from their children and family members for a long time. Many of them were over anxious to know particularly the fact of their children. There is urgent need to ensure that women prisoners should have frequent opportunities to unite with members of their families. The Mullah Committee on Jail Reforms expressed the view that to have specially separated jails for 5 to 6 women offenders in every district or sub-divisional jail is administratively difficult and financially prohibitive. Again concentrating all women prisoners in one jail can be faulted on the ground that this arrangement keeps women prisoners in far-away places separated from their kith and kin. A proper balance has to be struck between the two alternatives.

FEMALE UNDERTRIALS:

It is also disturbing to note that there is prolonged imprisonment of under trial women who constitute more than 70 percent of female jail population of the country. There are under trial women languishing for 4 to 5 years in jails for offences for which



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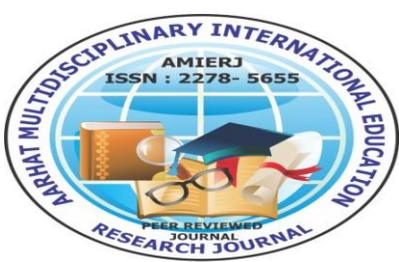
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the sentence would have been far less if they had been convicted. Again, many women prisoners continue in jails for long periods as they are unable to defend themselves and ignorant of the ways and means of securing legal help and thus totally at the mercy of the jail officers, who often fail to show any understanding of their problems. The National Expert Committee on Women Prisoners with Justice Krishna Ayer as its Chairman (1987) stated after visiting many women prisons that both prisoners and the prison staff suffer from what was called by the Supreme Court “the pathology of misinformation or ignorance adverse impact on women than men. The society considers them as pariahs. Some of the women prisoners suffering life-imprisonment in jails said that their husbands no longer accept them after their release and they have no other place to go. Indeed a pathetic situation!

Moreover, a number of women prisoners suffer from mental depression and other forms of psychosomatic illness. There is hardly any arrangement for psychiatric treatment and counseling. Many women prisoners are totally ignorant of jail rules and procedures, and many life convicts, as NHRC team could find during a visit to a woman’s prison in U.P. are unaware of the remission already earned by them. They have become victims of State custody, “instituted by legal processes, their own ignorance and poverty”. In some jails there are crèches for children (up to the age of 5 years) accompanying women prisoners.

There is an international handbook on good prison practice known as ‘Making Standards Work’ prepared by Prison Reform International. It suggests that in a woman’s institution, there should be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made that, wherever practicable, children should be born in hospitals, Outside the institution. If a child is born in a prison, this shall not be mentioned in the birth certificate.

In U.S.A. courts have been receptive to the claims of female prisoners that their conditions of confinement should be equal to that of their male counterparts. Thus markedly unfair conditions in women’s prisons in comparison to men’s prisons have been



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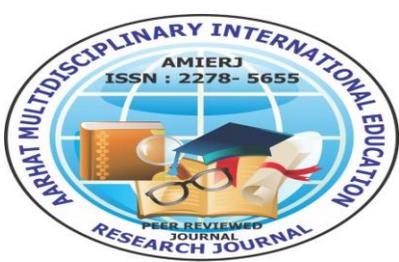
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held to violate the equal protection clause of the Fourteenth Amendment. In the case of *Catering v Wilson*, the court held that the officials of the Kentucky Department of Correction, unconstitutionally discriminated against the inmates of Kentucky's only prison for women. Among the equal protections violations found were inferior programmes, training, vocational education when compared to those available to similarly situated inmates at the State male correctional institutions. Similarly, health care needs of female prisoners must comport with the American Supreme Court decision in '*Estella v Gamble*'. This decision lays down that the prison officials are in violation of Eighth Amendment principle against unnecessary infliction of pain when they show a deliberate indifference to the serious medical needs of the prisoners.

For properly appreciating the problems of women prisoners, the fact has to be borne in mind that women prisoners have an entirely different criminal profile to male prisoners and a woman's social reality is substantially different from that of men. This difference should be reflected in their treatment in the criminal justice system, and particularly in their treatment in prisons. Women commit far less violent and serious crimes, far less frequently than men and they re-offend and abscond less violent and serious crimes, far less frequently than men and they re-offend and abscond less when they are released temporarily from prison. These apply, particularly to women, who have children they love and want to see. A gender-specific policy based on substantive equality should acknowledge that women are the primary caregivers of most of the children in society. It should also note that imprisoned women receive far less support from their partners than do male prisoners.

MODEL BILL:

The NHR has prepared a model Prison Bill for replacing the century-old Prison Act of 1894. The Bill discards some of the outdated provisions of the old Prison Act and reflects modern enological thinking on the reformation and rehabilitation of the criminals. It accepts the recommendations of the Mullah Committee and provides that in the headquarters of the Prison Department, a lady officer of the rank of DIG should be



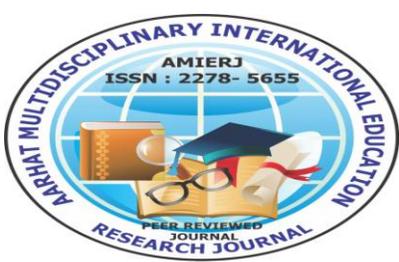
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posted exclusively to look after the problems of women prisoners. Apart from ensuring complete segregation and differential management of women prisoners under the supervision of the female staff, the proposed Bill advises the State Governments to formulate a comprehensive scheme for care, protection, treatment, education and development of women prisoners in keeping with their personal characteristics and rehabilitation needs. The NHRC hopes to persuade the Central and State Governments to pass a new Prison Act on the lines of the Bill prepared by it.

The rights and limitations. This often leads to callous disregard of human rights. Similarly, courts also fail to show proper awareness of women forming a special category, especially those with minor children or bread – earner responsibilities in cases of female-headed households. ‘They are’ to quote the words of the Krishna Ayer Committee on Women Prisoners. “a low dispositional priority and receive routine neglect. The immensely larger under trial figures among women vis-à-vis men prisoners is adequate illustration of how judicial processes have outcast the woman in a custodial limbo”.

To reduce the number of women under trials, the Mullah Committee recommended that bail should be liberally granted to them and those not able to furnish sureties should be released on personal recognizance. The Probation of Offenders Act should be extensively used for the benefit of women offenders in order to keep them away from prisons as far as possible. Women needing protective custody should be sent to prisons and those already there should be removed to special institutions run for that purpose. In the well – known case of ‘Hussainara Khaton’, [1] the Supreme Court held that the word ‘protective custody’ is an euphemism calculated to disguise what is really nothing but imprisonment and is nothing but imprisonment and is nothing “short of blatant violation of personal liberty guaranteed under article 21 of the constitution”. The court issued direction that all such women and children in ‘protective custody’ in the jails of Bihar should be released and taken forthwith to welfare homes or rescue homes and should be kept there and looked after properly. There should be wider use of



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parole or furlough in case of women. "The women's central role in relation to the family and the strain caused on her immediate family as a result of imprisonment", observed Krishna Iyer Committee on Women Prisoners, should also "necessitate in liberal use of bail, probation, parole and other innovative forms of sentencing". The Committee recommended setting up of women's courts. Such institutions, preferably headed by women and committed to less formal procedures of adjudication, will ensure speedy and specialized attention to women within the Criminal Justice System.

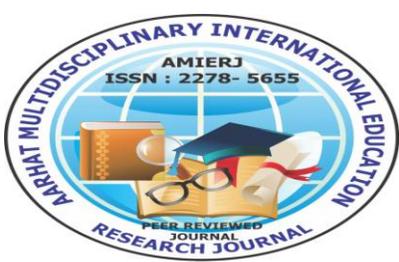
The National Human Rights Commission's Members as well as officers visiting different jails have noted with dismay that there is no pre-release planning and well-laid policy for rehabilitation of women prisoners after their release. Indeed, women offenders in India face peculiar problems of rehabilitation during their post-release. Indeed, women offenders in India face peculiar problems of rehabilitation during their post-release period. They become vulnerable to suspicion and rejection and are stigmatized for having been in prisons.

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