UNIT -3 : WOMEN PRISONERS

STRUCTURE

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3.1. Introduction

In the east few decades the number of women Prisoners has considerably increased. A good num of studies have also been done on female criminality Ahuja (1969), Kawab (1982) Rani (1983) Nagla (1982), Bhant and Mishra (1980) etc. have analysed social background of female prisoners. It was predominantly found that women offenders were mostly in the age group of 20-40 years which directly reflected that female criminality was mainly the problem of young women. Most of them were married and mentally immature to cope up with the expectations of their husbands and in-laws resulting in maladjustments between then and their family members.
A Survey conducted by the secretariat of the United Nations on female criminality reveals that the increasing crime rate among women in most of the countries is a distinct phenomenon which has assumed a universal base. In view of the seriousness of the problem, the phenomenon of female criminality became a subject of focused discussion at the 5th U.N. Congress on the Prevention of Crime and Treatment of Offenders, held at Geneva in September 1975. In India also this problem is raising its head in a steady and progressive manner. Now women are more self-reliant, right conscious and participating in various activities outside family. In this process women have become subjected to more stress and strain in their social and personal life than before. Her strained relationships within the family naturally disturb the peace and tranquility in the family. In addition poverty, illiteracy, gender-bias and many other factors have made women more vulnerable to deviant ways of life.

3.2. Objectives
After going through this unit, you will be able to:
- Understand the causes of female criminality
- Observe the trends of female criminality
- Describe the status of female prisoners in India.
- Legal provisions relating to women prisoners
- State the attitude of the Supreme Court on women prisoners, particularly about their children.

3.3. Statistical Reality
In United States arrest rate among females during the year 1960 to 1972 was increased nearly three times more than that of among males. Similar trend was observed in crime statistics of Japan, German, Canada, Norway and New Zealand. According to Crime in India 2001 the female offenders under IPC crimes amounted to 5.8% only
and 3.2% under special laws in the same year. The percentage of female arrestees in cognizable cases had increased from 5.2% in 2000 to only 5.8% in 2004.

3.4 Criminological explanation of Female Criminality

Female prisoners constitute a very small proportion of the total prison population of any country. This relatively low proportion of women in prison population has been attributed to various factors like women’s innate nature, their domestic status, putative weaknesses, ambiguity regarding their responsibilities and their problems are often overlooked. In this background we have to understand the crime causation factors behind female criminality as explained by various criminologists.

Ahuja (1969) observed that the incidence of crime was rather low in lower caste families whereas Rani in her study (1983) found that a slightly more than 50 per cent women criminals belonged to backward castes. However, both of them found that the incidence of crime was high among women of low economic classes. It reflects the fact that the causative factor of criminality among women is economic constraint. In these studies, it was observed that more than 50 percent female criminals were dependent and the total income in their families was between Rs. 100 to Rs. 150 per month. Thus, a majority of the households were living with great difficulty with their meager incomes.

There are several studies which correlate criminality to geographical conditions. Some of these studies reveal that urban areas have more female offenders than rural areas. In fact, their study on female criminals was a starting point for looking into situational and environmental variables compelling women to commit offences. Most of the crimes committed by females are due to stressful family situation, marital maladjustment, disharmonious and often conflict prone relationship with husband, in-laws and other members of the family. In some cases, such a milieu of relationship becomes the central point where much of female criminality takes place. It is clear that maladjustment in inter – personal relationship within the family is one of the most important causes of criminality amongst women. Rani (1983) also supported these findings in her study. She found that in more than ten percent of cases domestic
factors played an important role in compelling many women to adopt criminal behaviour.

**Misra and Gautam (1982)** revealed that the female criminality increases as the level of education decreases and vice versa. They endorsed the studies of Ahuja and Rani that women criminals were generally young in age, married, illiterate and who also came from very low income groups. They also highlighted the fact that female criminality was largely due to broken home and rapidly changing social values. The consequences of female criminality were largely because of social disgrace, social avoidance and degradation in rank and prestige in the family and outside the family. They also found some criminality.

**Prasad (1982)** also maintained that illiteracy was an important factor of women criminality. His study also showed that the areas of conflicts in women’s life had been unhappy marital life, addiction of the husband to alcohol, drugs, gambling etc., his lack of interest in family matters and love to his wife, sexual incompatibility, discordant relationship with in-laws and members in the family, family’s low income and excessive expenditure etc.

**Nagla (1991)** pointed out that the growing participation of women in various fields might be one of the contributing factors for increase in the rate of crime among women. In 1987, out of total employment of 18.8 million in the organized sector 2.13 million i.e. 11.3 percent were women. As women are participating increasingly in the diversified fields of employment, there was more likelihood that they might indulge in anti-social and anti-legal activities like their male colleagues.

**Rao (1982)** analysed the extent of increase in women’s employment in organized sector. He had analysed the occupational distribution of women workers in the decade 1961–1971 which indicated a remarkable increase in the number of women workers as teachers, clerks, manual workers, medical personnel, social scientists and administrators. His study also revealed the significant increased of women in industrial divisions, transport and communication, banking, insurance, public administration, education and scientific laboratories and research.

**Kawale (1982)** indicated that the offences committed by women were pickpocketing, dacoity with arms, theft etc. These crimes were committed either singly or
in combination with others. These women belonged to such communities where they were treated equally with males. There was no discrimination between the two sexes while committing crimes. He also observed that rate of crime committed by women was not steady but it varied from place to place and time to time. The increase of criminality among women could perhaps be partly explained by the increasing participation of women in the economic activities and a perceptible bid for greater equality in economic roles.

Eswari (1982) in her study of 20 inmates each in Reception Centre and Women Home of Bengalore revealed that the pathologic family relationship in family and outside, willful rejection, peer group pressure, low socio-economic conditions, etc. tended to attribute to criminogenic personality traits associated with anti-social behaviour among female offenders.

Ghose (1984) analysed and scrutinized a socio-psychological background and personality dynamics of family of inmates of both open and close prisons to unravel their adjustment processes and attitude structure for a comparative viewpoint. The major thrust of her study had been on psychological variables, affecting the process of adjustment and attitudinal changes occurred in the mind of the families of inmates. Her study revealed, although different types of physical and social settings had been provided to the inmates of open and close prisons. The process of adjustment and attitude formation of inmates of both the prisons towards co-inmates, prison authorities, family and society had shown very marginal difference. It was observed that of 69 female convicts, 73.9 percent had been suffering from very acute feeling of insecurity and only 18.88 percent had positive self-esteem. Inmates with longer length of stay in prisons had lower self-esteem in comparison to inmates with shorter length of stay. High guilt feeling was evident in 30.43 percent of the inmates. Negative self-esteem was found more in convicts who belonged to lower social and economic strata. She observed further that the low self-esteem, not only had made the convict self-critical and non-conformist, but it had also created unhealthy interpersonal behaviour.

Most of the studies cited above found explanation in female criminality in women’s nature (adjustment), need (economic and social condition)
and situation (environment). It has been assumed that the problem of women criminality emanated from the rapid transformation of the society from past tradition to modernity. This process of transformation creates a changed situation which propels the individuals for quick and proper adjustment. It calls for the reorientation and change of values in their day-to-day social interactions. The discrepancies between the cultural goals and institutional means create frustration and aggression among the individuals in critical situation which lead to the deviant behaviour. This contention is further strengthened by the theoretical interpretation of Cohen (1970) and empirical findings of Rani (1983).

3.5 History of Women Prison in India

In India as early as in 1919-20 the Indian Jail 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 there from all over the State. The Committee felt that removal of 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 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 staff. They are often exploited and suffer many odd problems. Many complaints of sexual abuse 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, 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 ‘Nari Bandi Niketan’ 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

Human Rights in a Developing Society members for a long time. Many of them were over anxious to know particularly the fate of their children. There is urgent need to ensure that women prisoners should have frequent opportunities to unite with members of their families. The Mulla 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 keep women prisoners in faraway places separated from the kith and kin. A proper balance has to be struck between the two alternatives. It is also disturbing to
note that there is prolonged imprisonment of undertrial women who constitute more than 70 per cent of female jail population of the country. There are undertrial women languishing for 4 to 5 years in jails for offences for which 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 an 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 Iyer 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 about 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 Iyer Committee on Women Prisoners, “a low dispositional priority and receive routine neglect. The immensely larger undertrial figures among women vis-a-vis men prisoners is adequate illustration of how judicial processes have outcast the women in a custodial limbo.”

To reduce the number of women undertrials, the Mulla 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 not 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 Khatoon’, the Supreme Court held that the word’ protective custody’ is an euphemism calculated to disguise what is really 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 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 period. They become vulnerable to suspicion and rejection and are stigmatized for having been in prisons. Imprisonment has more 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 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 women’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 creches for children 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 women’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 held to violate the equal protection clause of the Fourteenth Amendment. In the case of Cauterino 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 protection 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 vs 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.

Doe 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 women’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 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 careers 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.

The NHRC 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 penological thinking on the, reformation and, rehabilitation” of the criminal. It accepts the recommendations of the Mulla Committee and provides that in the headquarters of the Prison Department, a lady officer of the rank of DIG should be 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.

3.6 **Status and living conditions of women prisoners – initiatives for new law.**

The general status of women in this country is not very high in comparison to their male counterparts. In social life, in many cases, they are discriminated in areas of health, education, diet, employment opportunities etc. In fact, gender bias is varying degrees almost in every sphere of social life. They are vulnerable to exploitation both physically and psychologically. This is reflected in their prison life also.

Their position in jails as women prisoners is rather more distressful. As reported by different jail reform committees, general living condition of women prisoners in India as a whole is not satisfactory. Female wards in prisons are mostly overcrowded. Adequate clothing and toilet facilities are not made available to them many a time due to over population. General health care of women prisoners in many prisons is not up to the mark. The basic facilities for education, vocational training, recreational facilities are also very limited. Although, the main objective of imprisonment is the rehabilitation of the prisoners in the main stream of life, due to many constraints, rehabilitation programmes have not been very successful in this country. Even if male prisoners find some way out to rehabilitate themselves, after their release, it becomes very difficult for the released women prisoners to be accepted back in the society. In fact, stigma is attached to female prisoners prove to be more damaging than their male counterparts in matter of their rehabilitation.

The All India Committee on Jail Reforms (1980-83) recommended the setting up of ‘Protective Homes’ rather than jails for women prisoners. It also recommended that women convicts, under-trials, prostitutes, murderers and hardened women criminals should be properly classified and kept separately. The jail Reforms Committee (1980-83), observed that in India, many women prisoners continued to languish in jails for long period, because of their inability to represent their cases in the courts and utter ignorance of their rights and privileges which they were
supposed to enjoy. They were not even aware of the rules regarding remission or premature release, and lived a life of hopelessness and frustration at the mercy of their fate.

The national Expert Committee on Women Prisoners chaired by Justice Krishna Iyer (1986-87) has made exhaustive recommendations for bringing about improvements in the management of women prisoners covering various facets. The Committee even formulated a draft “Legislative-cum-Administrative Code for consideration of the Government in this regard. The Committee strongly felt the need of adopting two basic approaches while dealing with women prisoners in the custody. These approaches are (a) maintaining the dignity of women in the custody, and (b) rehabilitation and social defence should be the principal purpose as well as the outcome of holding women as prisoners and undertrials in the prison. This Committee mentioned in its report that although, an increase in the number of women prisons in the country had slightly augmented facilities for women prisoners in forms of accommodation, health, food, medical, education and other basic necessities, the quantum of those facilities is still not adequate in view of increasing number of women prisoners in recent years.

The majority of women prisoners hail from rural areas. They are illiterate and shy and do not have courage to communicate their needs and grievances to the prison staff in their jails. They can not also ventilate their sufferings and transmit the same to higher authorities. The Committee observed that by and large women prisoners continued to live a life of insecurity and undergo sufferings and deprivations in various jails scattered all over the country. Some of the important recommendations made by the Committee for bringing about improvements in the living conditions of women prisoners are yet to be implemented. They are as follows:

I. “Separate prisons for women are a more satisfactory custodial option. In the spirit of correctional justice, the smaller number of women prisoners, in comparison to men, cannot be held as a valid factor limiting the creation of separate custodial facilities.

II. In existing prisons where women are in sufficient numbers, a proper classification system must operate which should include medical, criminological and social
assessment of the inmate and serve as basis for specialized and segregated care, treatment, employment training, education and rehabilitation of the inmate. In existing prisons with fewer inmates, scientific correctional care must be there even if physical segregation is not possible. The classification system should be introduced compulsorily in all prisons and custodial institutions. It should be used as a continuous programming and monitoring device rather than as a one-time activity.

III. Diet, clothing and basic living facilities (bath, toilet, personal and environmental hygiene) are due to every prisoner. Whatever. Adjustments within the prison procedures are possible should be made to help in removing minor irritants. The daily routine itself (wake up and lock up time) can be staggered to suit seasonal constraints.

IV. In this connection, the placement of a grievance box in all prisons where prisoners can drop in their complaints and suggestions and have the confidence that no retribution will accrue to them and will assist in involving inmates in custodial reform. In view of the predominantly illiterate status of women prisoners, the literate prisoners along with social workers, teachers, and probation/welfare officers attached to prisons should be asked to serve as scribes in recording the prisoner’s grievances and suggestions. Some incentive scheme for the best workable suggestion by a prisoner will motivate them to think along positive lines, and to relate better to the custodial ethos.

V. Some specialized attention through wider use of parole, furlough, commutation and suspension of sentence etc., is required to assist the female prisoner to discharge her maternal and breadwinner’s roles for her dependent older children who cannot be admitted to the prison.

VI. The physical state of most prison buildings is known and recognized to be bad. In certain States below the level of central prisons especially, the situation is unacceptable. Immediate provisions must be made for upgrading structures, adding to them and replacing them as necessary and feasible. In setting up new structures, keeping in view the lesser security risk posed by women offenders, and to suit their psychological needs better, it may be advisable to consider cottage-type, medium
security prisons which can provide less formal and more commune type custodial experience. Such a recommendation was earlier made by JRC. A comparable experiment in respect of juveniles is already successfully practiced through the SOS children’s Villages. Their experience can be studied for wider application to custody of women prisoners.

VII. The indiscriminate custodialization of women needs to be discouraged through careful sentencing and much greater reliance on non-custodial options than is currently visible. Further, the custodialization of mentally afflicted (criminal and non-criminal lunatic) women must be immediately renounced. Those taken in protective custody should be diverted to separate institutions and increasingly to community-based non-formal custodial and correctional options.

VIII. Upon reaching the age of 6 years the child needs to be handed over to a suitable person as per wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.

In order to further boost the implementation of this Article, the National Policy on Education recognizes the holistic nature of child The said Committee inter alia recommended the following suggestions particularly towards reformation and rehabilitation of women prisoners:

i) “In women’s rehabilitation, employment training has a pivotal role. Consequently, work in prison has to be given such potential economic worth and utility that all women in custody are willing to engage in work programmes. Recalling the large number of undertrial women prisoners a dissenting view is of compulsory induction of undertrial prisoners in any work activity as forced labour”

ii) They argue “Training of women prisoners is an area of great relevance to correctional work and to the process of restoration of dignity of the woman offender … There is no justification for protecting the prisoner’s fundamental rights not to work. No one should have the luxury to enjoy that right whether in or outside prison. The ethics and dignity of work are thus just as important to project as the economic
necessity of everyone working rather than being allowed to idle on account of constitutional and human rights.

iii) As far as practicable women prisoners shall be imparted training which will make them economically self-sufficient and capable of functioning independently in society.

iv) Probation, parole and other non-institutional modalities of corrective treatment shall be widely used in case of women offenders, save in exceptional cases where specified considerations of prisoner’s or state security limit such options.

v) Women who pose no security risk and meet other suitability criteria may be housed in open jails where work facilities related to their agricultural or other occupational background should be available.

vi) Women illegally detained in jails on grounds of destitution, begging or vagrancy may be rehabilitated in appropriate institutional and community-based services and modalities.

vii) Female prisoners shall be classified on the basis of the age groups, nature of crime, type and length of sentence, etc. and correctional treatment of prisoner shall be related to her specific problem and situation. For this purpose, treatment personnel trained in correctional approaches shall be appointed.

Therefore, in formulating new prison laws the aforesaid observation regarding rehabilitation and correctional treatment of women prisoners be kept in mind.

3.7. Children of women prisoners and the Supreme Court

A study done by the National Institute of Criminology and Forensic Science on the children of women prisoners in Indian Jail reveals the following facts:

1. The total number of women prisoners living in different jails in India as on 30.06.1997 was 7268 out of which 1610 were convicts.... The remaining 5658 were undertrials.

2. These were 885 children living in different prisons of the country with the prisoner mothers as 30.06.97

3. Mothers of 676 children were undertrials .... The mother of rest 06 the children (209) were convicts.
A public interest litigation (PIL) case was decided by the Supreme Court on April 13, 2006, namely *R.D. Upadhyay v. State of A.P & others* (2006,4 SCALE) wherein the question of right of development of children who are in jails with their mothers came before the Apex court. On the basis of various affidavits submitted by various State Governments and Union Territories as well as the Union of India the Supreme court issued the following guidelines:

In light of various reports referred to above, affidavits of various State Governments, Union Territories, Union of India, and submissions made, we issue the following guidelines:

1. A child shall not be treated as an under trial / convict while in jail with his/ her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

2. Pregnancy:
   a. Before sending a woman who is pregnant to jail, the concerned authorities must ensure that jail in question has the basic minimum faculties for child delivery as well as for providing pre-natal and post-natal care for both, the mother and the child.
   b. When a woman prisoner is found or suspected to be pregnant at the time thereafter, the lady Medical officer shall report the fact to the superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.
   c. Gynecological examination of female prisoners shall be performed in the District Government Hospital. Proper prenatal and post-natal care shall be provided to the prisoner as per medical advice.

3. Child birth in prison:
   a. As far as possible and provided she has a suitable option, arrangements for temporary release / parole (or suspended sentence in case of minor and casual offender) should be made to enable and expectant prisoner to have her delivery
outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.

b. Birth in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

c. As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

4. Female prisoners and their children:

a. Female prisoners shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years,

b. No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.

c. Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

d. Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.

e. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.

5. Food, clothing medical care and shelter:
a. Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State /U.T. Government shall lay down the scales.
b. State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.
c. A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them or a regular basis.
d. Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.
e. Clean drinking water must be provided to the children. This water must be periodically checked.
f. Children shall be regularly examined by the lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, Diet and so on may also be provided on the recommendation of the Medical Officer.
g. In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.
h. Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.
i. Children of prisoners shall have the right of visitation.
j. The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

6. Education and recreation for children of female prisoners:

a. The child of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in crèches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.
b. There shall be a creche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked
after children below three years of age shall be allowed in the crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery outside the prison premises.

7. In many states, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.

8. The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.

9. Diet:

Dietary scale for institutionalized infants/children prepared by Dr. A.M. Dwarkadas Motiwalsa, MD (Paediatrics) and Fellowship in Neonatology (USA) has been submitted by Mr. Sanjay Parikh. The document submitted recommends exclusive breastfeeding on the demand of the baby day and night. If for some reason, the mother cannot feed the baby, undiluted fresh milk can be given to the baby. It is emphasized that “dilution is not recommended; especially for low socio-economic groups who are also illiterate, ignorant, their children are already malnourished and are prone to gastroenteritis and other infections due to poor living conditions and unhygienic food habits. Also, where the drinking water is not safe/reliable since source of drinking water is a question mark. Over-dilution will provide more water than milk to the child and hence will lead to malnutrition and infections. This in turn will lead to growth retardation and developmental delay both physically and mentally.” It is noted that since an average Indian mother produces approximately 600 – 800 ml. milk per day (depending on her own nutritional state), the child should be provided at least 600 ml. of undiluted fresh milk, over 24 hours if the breast milk is not available. The report refers to the dietary guidelines for Indians a manual published in 1998 by the National Institute of Nutrition, Council of Medical Research, Hyderabad, for a balance diet for infants and children ranging from sixth months to 6 years of age. It recommended the following portions for children from
the ages 6-12 months, 1-3 years and 4-6 years respectively: cereals and millets -45, 60, and 150-210 grams respectively; pulses -15, 30 and 45 grams respectively; milk 500 ml. (unless breast fed, in which case 200 ml); roots and tubers – 50, 50 and 100 grams respectively; green leafy vegetable -25, 50 and 50 grams respectively; other vegetable -25, 50 and 50 grams respectively; fruits – 100 grams; sugar -25, 25 and 30 grams respectively and fats /Oils (Visible ) – 10, 20 and 25 grams respectively. One portion of pulse may be exchanged with one portion (50 grams ) of egg / meat/chicken /fish. It is essential that the above food groups to be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

10. Jail Manual and/or other relevant Rules, Regulations, Instructions etc. Shall be suitably amended within three months so as to comply with the above directions. If in some jails, better facilities are being provided, same shall continue.

11. Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. State legislatures may consider passing of necessary, having regard to what is noticed in this judgment.

12. The State legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.

13. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

14. Copy of the judgment shall be sent to Union of India, all State Governments / Union territories, High Courts.

15. Compliance report stating steps taken by Union of India, State. Governments, Union Territories and State legal Services Authorities shall be filed in four moths where after matter shall be listed for directions.

3.8 Legal Provisions for Women Prisoners
There is no special provisions for the women prisoners in any of the Indian prison laws except in the Prison Manual guidance to keep women prisoners separately. But the West Bengal Correctional Services Act, 1993 in Chapter XIX provided separate provisions for the women prisoners which is reproduce below as a model law on this area.

66. **Correctional homes for female prisoners** - (1) The State Government shall establish such number of correctional homes for female prisoners as it may consider necessary. Pending the establishment of correctional homes for female prisoners, both male and female prisoners shall be confined in the same correctional home:

Provided that the female prisoners shall be accommodated in the female ward of a correctional home till they are transferred to a correctional home for female prisoners as and when established.

2. A correctional home for female prisoners shall have the status of a district correctional home and shall be of the type. Of a work centre. Medical Officers, pharmacists, trainers, matrons and other staff of such correctional home shall be females:

Provided that male security staff may be employed for duties outside such correctional home and inside the office thereof.

67. **Segregation of female prisoners** – 1) Female prisoners may be accommodated in a correctional home for female prisoners or in the female ward of a correctional home, as the case may be in the following manner:

a) female prisoners classified as habitual offenders shall be segregated from female non-habitual offenders;

b) female undertrial prisoners shall be segregated from female convicts; and

c) female prisoners convicted or charged for an offence under the Bengal Suppression of Immoral Traffic Act, 1933 or for any sexual or other offence involving grave moral depravity, shall be segregated from all other types of female prisoners.

Explanation – For the purpose of clause ©, the offence of pick-pocketing or shop-lifting shall be deemed to be an offence involving grave moral depravity.
2) No male officer or warder shall enter the female ward or enclosure except for the performance of his duties under this Act or the rules made hereunder or for carrying out the orders of his superior. In such case, the officer or warder shall be accompanied by the matron and a female warder in a central correctional home and by a female warder in a district or subsidiary correctional home for so long as such male officer or warder remains in the female ward or enclosure on duty:

Provided that such male officer or warder may enter the female ward or enclosure at night only for discharge of an unavoidable duty which cannot be held up till the next morning and, in such emergency, the male officer or warder shall make an entry in the gate register noting down the purpose and time of his entry and the time of his exit and shall be accompanied by a matron or a female warder.

3) A female prisoner shall not be accommodated in a female ward alone. If there is no other female prisoner in the correctional home, the Superintendent shall depute a female warder to stay and sleep with the female prisoner at night. In a subsidiary correctional home where there is no female warder, the Assistant Controller shall employ a female warder from the panel prepared by the Superintendent to stay and sleep with the female prisoner as aforesaid.

4) The male warders escorting any visitor shall remain outside the female ward or enclosure and the visitor shall enter the female ward or enclosure accompanied by two officers not below the rank of Controller.

5) A police officer may, on the orders of a competent court, take the foot print, finger impression, photograph or measurement of a female prisoner in the office of the correctional home in the presence of an officer of the correctional home, not below the rank of Controller or Assistant Controller and the matron or a female warder.

6) When a female prisoner is confined in a cell, the key of the cell shall be in the custody of the female warder who shall be within hearing distance of the female
prisoner and, for the day and night, two separate female warders shall be placed on
duty as far as practicable.

68. Works to be performed by female prisoners. - Female prisoners shall generally be
employed in the types of work to which they are accustomed. Female prisoners
sentenced to imprisonment for any period exceeding six months shall be trainee
bread-earning avocation such as bamboo crafts, wood-crafts, doll-making,
embroidery, painting of earthen pitchers and pots, tailoring, weaving of tapes, towels,
scarf, knitting of woolen garments, and child-care, etc., and in performing arts
such as music and dramatic art. For the aforesaid purpose, lady trainees may be
employed on payment of such remuneration as may be prescribed.

69. Confinement of female prisoner with child: - 1) If a woman is arrested on a criminal
charge and is confined in a correctional home as an undertrial prisoner or convicted
prisoner and has a child who has not attained the age of five years, she shall be
allowed to retain the child with her in the correctional home till the child attains the
age of five years unless.

Her husband or any other relative offers to maintain the child during the period of her
confinement in the correctional home.

2) The Superintendent shall be responsible for proper care and nourishment of the
child retained in the correctional home under sub-section (1). When the child attains
the age of five years during the term of imprisonment of the female prisoner, the
child shall be given to her husband or, in his absence, to any other relative
according to her choice. In case the husband or other relative does not accept the
child, the Superintendent shall send a notice to the Commissioner of Police or the
District Magistrate, as the case may be, who shall make arrangement for the custody
of the child in consultation with the Director of Social Welfare, West Bengal.

3) If a child is born of a female prisoner in a correctional home, the Superintendent
shall make all hygienic arrangements as are necessary, both for the mother and the
child, provide facilities for the performance of such ceremonies as are customary to
the community to which the female prisoner belongs, and grant such amount to meet
the cost of the ceremony as may be prescribed.

3.9 Summary
In the last few decades the number of women prisoner has been increased and the problem of female criminality is mainly confined among young women. The Secretariat of the United Nations also acknowledged the increasing crime rate among women and the 5th UN Congress on the Prevention of Crime and Treatment of Offenders in 1975 also focused on this problem.

The criminologists worldwide tried to explain the factors behind the female criminality. The most important factors are: differential sex role expectations, sex differences in socialization patterns and application of social control, differential opportunities, strain and stress in social and personal life, disturbed family relationship, poverty, illiteracy etc. The female offenders under IPC crimes in India in 2004 was only 5.8%.

The history of women prison in India can be traced from the recommendations of Indian Jail Committee 1919-20. There was no separate prison for women at that time and only after independence few Special Jails for women prisoners were developed in India. However the condition of women prisoners either in the separate women Cell or in Special Jails was very unsatisfactory. The National Human Rights Commission visited some Jails including women prisons and recommended some measures for improvement of conditions in women prison as well as women prisoners. The Supreme Court of India in a PIL case, namely D. Upadhyay v. State of Andhra Pradesh (2006) issued some Guidelines for protecting the human rights of children of women prisoners.

Though there are four legislations relating to prisons in India, namely Prison Act, 1894; Prisoners Act, 1900; The Transfer of Prisoners Act, 1950 and Prisoners (Attendance in Courts) Act, 1955; but there is no specific provisions addressing exclusively for the women. In the Jail Manual, however, there is a provision for keeping women prisoners in separate cells. But in The West Bengal Correctional Services Act, 1992 we found a separate chapter on Women Prisoners through which most of the human rights of women prisoners have been recognized.

3.10 Terminal Question
1. What are the criminological explanations of female criminality postulated by various criminologists?

2. Give an outline of history and development of women prisons in India.

3. Write a critical note on the role of National Human Rights Commission in protecting rights of women prisoners in India.

4. What are the Guidelines issued by the Supreme Court of India in protecting various rights of children of women prisoners?

5. Give answer to the following questions in one sentence:
   a) In which UN Congress on the Prevention of Crime and Treatment of Offenders the problem of female criminality became a focused subject?
   b) Which age group the women offenders are mostly found?
   c) What is the rate of female offenders in India as reported in *Crime in India*?
   d) Who chaired the National Expert Committee on Women Prisoners 1986-87?
   e) In which PIL case the Supreme Court recognized human rights of children of women prisoners?

3.11 Answer Hints

1. The criminologists and researchers who had focused in the field of female criminality are Dale Hoffman-Bustamente, Susan K. Datesman, Frank R. Scarpitti, Richard M Stephen etc. in other countries and Ahuja, Mishra and Gautam, Prasad, Nagla, Rao, Kawale etc. in India to be discussed briefly.

2. The history of women prison in India to be started with the recommendations of the Indian Jail Committee 1919-20 and to be concluded with the recommendations of National Expert Committee on Women Prisoners 1986-87.

3. The role played by the National Human Rights Commission after visiting various jails including Female Prisons are to be referred. Moreover the role and recommendations of the NHRC for improving the conditions of women prisons be mentioned.
5. Read the whole Unit carefully.

3.12 References and Suggested Readings