

AWAITING JUSTICE: WOMEN PRISONERS AND MISTRIAL IN INDIA

Sameera Khan¹

Abstract

Women constitute over four per cent of the total prison population in India. There is dearth of prisons for women in India and majority of women prisoners in India are housed in separate enclosures inside men's prisons. This often means that the specific needs of the women prisoners are not accounted for in the prisons. The overcrowding of prisons is another major issue which leads to poor hygiene, sanitary facilities and shortage of food. The women not only face punishment for the crime that has been committed by them but also face the social and moral taboo that comes attached with it. In addition to this, they also face custodial violence and sexual victimisation in prisons and detention centres which stimulates their misery, distress and hardships in prisons. In addition to this, they also face prejudicial and detrimental treatment during their trials. The lethargic judicial system of India has led to the presence of a large number of undertrials languishing inside Indian prisons. Women are particularly vulnerable as they are often not aware of the rights available to them. Moreover, they often belong to the oppressed classes in the Indian society which puts them at a further disadvantage. The specific provisions related to the process of arrest of women and the procedures to be followed after the arrest are ignored and jeopardised by the law enforcement authorities. Additionally, they often come from poor, deprived and disadvantageous backgrounds which becomes obstacle for them in getting legal aid and a fair trial process for themselves. However, the law enforcement authorities do not follow the process and inform prisoners of their rights of bailment after the arrest. The research paper analyses the sociological and legal aspects which lead to the mistrial of women prisoners in India. The paper will highlight the challenges faced by the women prisoners during the pre-trial and post-trial period. It will also enumerate the conditions and abuse of rights of the women prisoners during their trial in the time of

¹ Research Scholar, Department of Law, Aligarh Muslim University, Aligarh

COVID- pandemic. It will then suggest measures that can be taken in order to prevent this malfeasance and miscarriage of justice faced by women prisoners in India.

Keywords: *Human Rights, Statutory Rights, Women Prisoners, Mistrial, Fair Trial, Judicial System, Gender Specific Prisons, Jeopardised Process of Arrest, Miscarriage of Justice.*

1. INTRODUCTION

“Much more remains to be done to identify and address the pathways to women’s incarceration; to establish better, safer and more gender-sensitive conditions for women prisoners; to ameliorate the negative consequences of women’s imprisonment.”

-Rashida Manjoo

The concept of fair trial is based upon the Latin maxim *Lex uno ore omnes alloquitur*. The maxim states that everyone should be treated equally before the law. There are several judicial systems all around the globe which practice this maxim religiously. The Article 14 of the Indian Constitution which expressly provides for the Right to Equality, considers a fair, upright and equitable trial process as an indispensable part of any judicial proceedings. The procedure, ethical principles and tenets of a trial are the reflection of its justness and fairness that encompasses the legal system of a country.

There are several International Conventions which also provide for a Right to a Fair Trial. **Article 6** of the *European Convention on Human Rights*² provides that, “*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*” The right is also provided under **Article 7** of the *African Charter of Human Rights*³, and it provides that, “*Every individual shall have the right to have his cause*

² Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art 6

³ African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 7

heard.” It includes the right to file an appeal, be presumed innocent until proven guilty, the right to defend himself and the right to be tried within a reasonable time by an impartial court or tribunal. **Article 10** of the *Universal Declaration of Human Rights, 1948*⁴ also states that, “*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*” This shows that a fair trial must be guaranteed to every accused under any circumstance since it forms the foundational touchstone of every legal system all over the world.

Every accused has the right to be provided with a fair trial. It is one of the hallmarks of a democratic justice system which operates on the principle of Rule of Law. A trial must be free of biases and lapses during an investigation. A person should only be punished for the offence which he has committed and should be in consonance with the law of the land. There are several instances where innocent persons are tortured, abused and denied a fair trial process which provides a negative impression of the Indian Justice System. Women are no exceptions to this rule, especially the incarcerated population inside the Indian Prisons. Women in Prisons, being the disadvantaged gender, are more vulnerable to mistrial in India. They often lack awareness about their basic human and legal rights which makes them susceptible to exploitation.

Prisons have largely been developed with regards to the needs of the male prisoners. The vast majority of prisoners are males, which meant that the infrastructure, rules, facilities, training programs and activities are designed to meet the needs of male inmates. Though, there has been an increase in the number of women prisoners in Indian prisons, it has not led to any significant alteration in the prison system. More often, the female prisoners are asked to adapt and adjust themselves to a system which has been exclusively designed for men. Therefore, special emphasis is required to fulfil the need and requirements of the women prisoners who are misjudged, ridiculed and overlooked by our society.

The Indian Prison System has always considered the women prisoners as a second-class citizen or an inferior subject. The problem of overcrowding and inadequate accommodation has posed great difficulty in separating the women convicts from the undertrial female prisoners. Despite various directions from the Ministry of Home Affairs (MHA) to have dedicated prisons for women in each state, there are only eight states which have single prisons constructed for

⁴ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), art 10

women prisoners. Therefore, the right of women to have separate Custodial Facilities has been a long-driven journey. However, the implementation of such recommendations is hardly brought into practice.

2. FAIR TRIAL VERSUS MISTRIAL IN THE INDIAN LEGAL SYSTEM

The term *mistrial* has not been defined anywhere in the Indian Legal System. But, we can analyse the deplorable condition of women prisoners through inadequate and incompetent institutional framework designed for the women prisoners which often leads to their mistrial in India. The Women are often incarcerated far away from their homes due to the lack of separate women prisons. This makes family visits even more difficult. In addition to this, women are also regarded as morally deviant in addition to legally deviant unlike their male counterparts.⁵ This perception often leads to their abandonment by their own families. In her book, ***“Women Inside’: Prison Voices From India”***, Rani Dhavan Shankardass wrote:

“Prisons may classify prisoners according to their legal offences but a prison’s social grouping, especially in a women’s prison, is not all about legal offences: it’s about them having crossed the barriers of social and moral taboos set out over the ages by custom, tradition and often religion, and are expected to be a stronger sanction than the law.”

The state of women prisoners can be gauged by the fact that in some prisons the barracks are so small that the authorities are forced to measure the bodies of women and assign a sleeping area just that size. They are provided with no privacy at all. There have also been reports where women prisoners did not have adequate water to bathe more than once in four five days even during the peak summer season. They are also subjected to strip searches after every Court visit with little respect to their dignity and medical conditions.

Women undertrials and prisoners both are often subjected to custodial violence and sexual abuse inside the prisons which further denies them the right to a fair trial. The availability of food is another major concern. They are often under fed and do not get the requisite nutrients which further leads to the deterioration of their health.

The NCRB data which shows an occupancy rate of 56.09 percent in women only. However, the occupancy rate varies across different states and the women prisons in several states suffer from overcrowding Moreover, statistics show that 68 percent of prisoners in India are those

⁵ Jahnavi Sen, ‘Buzz of a Mosquito... But With the Sound of Grief’: The Lives of India’s Women Prisoners’ (*The Wire*, 2021 <<https://thewire.in/women/india-women-prisoners-rights>> accessed 10 March 2022

who have not been convicted by any court for a crime. In addition to this, an analysis of the reports of the NCRB shows that the occupiers of prisons are often illiterate or semi-literate and come from socio-economically weaker sections of society. There are over 65 percent women prisoners who belong to the SC, ST and OBC categories who are unable to afford the bail fee in most instances.

The women undertrials are required to be produced regularly before the Court so that the trial can be completed expediently. However, they are rarely produced before the Court. Moreover, despite Governmental and Judicial mandates to provide legal aid to prisoners, the frequency of lawyer visits is very low. This means that legal aid is not provided efficiently to women prisoners. This is also compounded by the fact that the lawyers providing legal aid are not paid adequately for their job. This further leads to mistrial of women prisoners and women undertrials in India.⁶

The Supreme Court has stated that, *“the high prevalence of women undertrials in jails is a crying shame on the judicial system.”* The Supreme Court ad stated that it was high time we realise that, *“in the dark cells of our prisons there are large number of men and women who are waiting patiently, impatiently perhaps, but in vain for justice.”* They have been termed as the, *“helpless victims of the callousness of the legal and judicial system.”*

3. SPECIAL PROVISIONS FOR THE ARREST OF WOMEN IN INDIA

There are a number of provisions in the Criminal Procedure Code, 1973 which deal with the procedure of arrest for women in India. This shows acknowledgement of the fact that the needs of the women are different and they require special provisions so that their right to a fair trial is not compromised. This is reflective of a progressive society which is sensitive towards the specific needs of women. Some major provisions related to the procedure of arrest of women are discussed below.

The official who makes the arrest of a woman should ideally be dressed in plain clothes. This will reduce the stigma which is associated with the incarceration of women prisoners. Moreover, when a woman is arrested, provisions for the custody of her minor children should also be made. If the child is unable to accompany the mother to the prison and no friends or

⁶ Vinita Govindarajan, ‘Six charts explain how undertrial prisoners in India are denied the right to fair trial’ (*Scroll*, 13 July 2017) <<https://scroll.in/article/843539/six-charts-show-how-undertrial-prisoners-in-india-are-denied-the-right-to-fair-trial>> accessed 10 March 2022

relatives exist who can take care of the child, such child should be placed in a Child Care Institution.⁷

Section 46(1) of Criminal Procedure Code, 1973 prevents any physical contact with the woman while arresting unless the circumstances necessitate doing so. A female police officer is allowed to make physical contact with the accused women under any circumstance. A woman should only be searched by another women while maintaining strict decency under **Section 51(2) of the Criminal Procedure Code, 1973**. In the case of *Vibin P.V. v. State of Kerala*,⁸ it was observed that a person must be protected from torture and abuse by the police or any other law enforcement agencies.

The **Criminal Procedure Code, 1973** has special provisions which should be followed for the arrest of a woman. **Section 46(4) of the Criminal Procedure Code, 1973** provides that, “*a woman shall not be arrested after sunset and before sunrise.*” The only circumstance under which a woman can be arrested can be one where there is the prevalence of extraordinary circumstances which necessitate the arrest of the woman. Even in such a situation, there should be a Lady Police Officer who has to make a written report and obtain prior permission of the Judicial Magistrate, First Class in whose jurisdiction the offence is committed or the arrest is to be made.

A person is entitled to know the grounds of their arrest under **Section 50(1) of the Criminal Procedure Code, 1973**. The grounds can be communicated by the police officer or any other person executing the arrest. Moreover, in case an arrest is made without a warrant, a person must be informed of their right to be released on bail post the arrangement of sureties if the arrest is for a bailable offence under **Section 50(2) of Criminal Procedure Code, 1973**.

Section 436-A of Criminal Procedure Code, 1973 provides that the “*maximum period for which an under-trial prisoner can be detained.*” It states that if a person has “*undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties.*” In the case of *Bhim Singh v. Union of India*,⁹ the Supreme Court stated that the Section 436 A of the Criminal Procedure Code, 1973 must be implemented

⁷ ‘Women in Prisons’ (*Vikaspedia*, 2021) <<https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/women-in-prisons>> accessed 10 March 2022

⁸ *Vibin P.V. v. State of Kerala* 2013 (1) KLT 102

⁹ *Bhim Singh v. Union of India* (1981) 19 DLT 446

effectively in order to reduce the number of undertrial prisoners. The Supreme Court further directed the CJM/Session's judge *"to hold a single sitting in a week in each prison of their jurisdiction for the next two months to identify such eligible persons who have completed half of the maximum period of imprisonment for the said offense and shall make an appropriate order to release them in an order dated 5th September, 2014"*. The MHA also sent a letter to all the States and Union Territories to comply with this order in order to provide for release of vulnerable groups like women who also fall under the section. In this order, the MHA specifically identified women as a vulnerable group and provided that they should be released at the earliest in compliance with the guidelines so that they do not suffer from mistrial and injustice.¹⁰

Moreover, the proviso to **Section 437(1) of the Criminal Procedure Code, 1973** provides that, *"the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail."* This provision grants discretionary power to the Courts to release women on bail irrespective of the offence that is committed. This is an enabling provision to allow courts to make special considerations keeping in mind the facts and circumstances of the case. The Kerala High Court denied a bail to a woman petitioner in the case of *Jollyamma Joseph v. State of Kerala*¹¹ due to the fact that the allegations against the petitioner were of a grave and serious nature. This explains that the proviso to the Section 437(1) is used only under specific circumstances.

Section 304 of the Criminal Procedure Code, 1973 provides that, *"Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State."* This Section reiterates for compulsory legal aid to be provided by the State to the accused. This stance was also reiterated by the Supreme Court in the case of *Hussainara Khatoon & Ors. v. Home Secretary*.¹² It is one of the key components of a fair trial and must be provided to every accused. This was important for women prisoners as they often come from the marginalized sections of the society and are not aware of their rights under the law. This decision will allow them to properly represent

¹⁰ Shubham Gupta, 'Analysis: Indian Women in Detention & Access to Justice' (*Legaldesire*, 4 December 2018) <<https://legaldesire.com/analysis-indian-women-in-detention-access-to-justice/>> accessed 10 March 2022

¹¹ *Jollyamma Joseph v. State of Kerala* (2020) SCC Ker 3265.

¹² *Hussainara Khatoon & Ors. v. Home Secretary* (1979) AIR 1369.

themselves before the Court and will provide them the protection of Article 21 and Article 39-A of the Indian Constitution.

4. THE BALANCE OF BOTH ENDS: FAIR INVESTIGATION AND PROSECUTORIAL MISCONDUCT

The impact of prosecutorial misconduct on a trial can be immense as it results in the creation of a system which deprives the accused the right to a fair trial. This has been acknowledged over the years by Indian and foreign. The US Court made prosecutorial misconduct a ground for the judge to declare mistrial in the case of *Brady v. State of Maryland*.¹³ The situation of involvement of prosecutors in India is different from that in the United States since in India the prosecution gets involved only at the stage of the filing of the chargesheet. Major decisions in India with regards to investigation and filing of chargesheet are taken by investigating agencies.

The Indian Supreme Court has held in the case of *Manu Sharma v. State (NCT of Delhi)*¹⁴ that, “*the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.*”

The decision of the Apex Court was based on the premise that preservation of Human Rights and Dignity is a touchstone of the Criminal Justice System in India. It is based on the principle that an accused should be considered as innocent until he is proven to be guilty. The Supreme Court in the *Manu Sharma* case further stated that the responsibility to ensure a fair investigation is not only on the investigating agency but also on the court. The investigation should not be biased.

The role of the public prosecutor during a trial was also discussed by the Supreme Court in the case of *Shiv Kumar v. Hukum Chand*.¹⁵ The court stated that the Public Prosecutor must strive to ensure that the trial is a fair one to the Court, investigating agencies and the accused. In case there is any piece of information which comes to the knowledge of the Public Prosecutor that

¹³ *Brady v. State of Maryland* 373 US 83 (1963).

¹⁴ *Manu Sharma v. State (NCT of Delhi)* (2010) 6 SCC 1.

¹⁵ *Shiv Kumar v. Hukum Chand* (1999) 7 SCC 467.

will provide a benefit to the accused in his defence, it should be brought to the notice of the court by the Public Prosecutor, even if it had been overlooked by the Defence Counsel.

Therefore, it has been time and again reverberated by the Supreme Court that an unbiased investigation and as a sequitur, fair trial are essential concomitants of Article 21 of the Constitution of India. For the courts, these safeguards are in the form of discharging the accused under **Sections 227 and Section 239** of the Criminal Procedure Code, 1973, where *“if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing”*.

The courts have basically ensured that the investigation agency and the prosecution act fairly in the interests of justice to provide a fair trial to accused. The concept of a fair trial was never envisioned to be just a mirage by the framers of the Indian Constitution. It is based on the belief that where the accused and their families truly believe they are innocent, the justice system will match heavens and earth to vindicate them with their honour. The right is envisaged in the Indian Constitution and the Indian Courts have sought to ensure that the principles of fair trial are duly followed at all stages from arrest, during the investigation till the final verdict.

5. PANDEMIC AND WOMEN PRISONERS

It was the responsibility of the legal system to devise mechanisms for the prevention of the spread of the Pandemic in the custodial institutions. The failure to do the same resulted in a catastrophe. When data was collected related to the number of women in Indian Prisons during the Pandemic, it was found that there are 22,927 women inmates in all prisons in India which forms 4.1 per cent of the total inmates, an increase from 3.3 per cent in 2000 as per the NCRB statistics.¹⁶ During Covid-19, there were no positive attempts made to recognise that their right to health and life was far more precious than the havoc created by the Pandemic. Though, it was argued that all women inmates should be released immediately and how a disaster could become a catastrophe if the legal classification of women prisoners and undertrials deserving of release or bail is not altered.

¹⁶ Pratiksha Baxi & Navsharan Singh, ‘A Case for the Release of All Women Undertrial Prisoners’ (*The Leaflet*, 4 April 2021) <<https://www.theleaflet.in/a-case-for-the-release-of-all-women-undertrial-prisoners/>> accessed 10 March 21022

It had been noted by the Supreme Court that “*Covid-19 can be fertile ground for the incubation of Covid-19.*”¹⁷ Therefore, the Supreme Court directed the State Governments and the Central Government to constitute a ***High-Powered Committee (HPC)*** which can evaluate which categories of prisoners can be released in the light of the Pandemic.¹⁸ However, this rule did not apply to women prisoners. There were several categories of women excluded from interim bail. These included women who were foreigners, or undergoing trial under the drug law, child sexual offence law, rape law or corruption.

The Covid-19 Pandemic posed a specific challenge to women, children, and gender and sexual minorities in prisons. Bail had been denied to older women prisoners, detenues and undertrials. All women in prisons whether pregnant, menstruating or menopausal, lactating mothers, mothers with their children, women with disabilities, and women with co-morbidities continue to be incarcerated in overcrowded prisons. The decisions taken by the HPC’s did not specifically categorize women as a class and they were not specifically classified as belonging to the high-risk category and had to stay inside the prisons even during the Pandemic. Moreover, the women belonging to the minority communities were often subjected to cruder forms of torture and sexual abuse in the police and judicial custody during the Covid-19 crisis.

This was particularly devastating for women in general since they already bear the brunt of being the discriminated gender. The method followed to classify women that could be released was the same as that of male prisoners and there were no special arrangements made to justify the specific needs of the women in custody. There was a lack of concern shown for the plight of pregnant inmates even during the Pandemic. Safoora Zargar was charged under the **Unlawful Activities (Prevention) Act (UAPA), 1967** and her bail application for childbirth was rejected. She was forced to give birth in the prison. This shows the sorry state of affairs for women prisoners during the Pandemic. They suffered grave mistrials and were denied basic human rights during the Covid-19 Pandemic.

¹⁷ Shivkrit Rai & Shubham Airim, ‘How Indian Prisoners Stand to Lose the Most During Coronavirus Pandemic’, Outlook (2021)

¹⁸ Writ Petition (c) No. 1/ 2020

6. JUDICIAL APPROACH TOWARDS THE INCARCERATED WOMEN POPULATION

Women are vulnerable to detention since they lack the requisite knowledge and means to legal aid. They often belong to marginalized sections of the society which often renders them vulnerable to discrimination. In several instances, they lack financial support from family due to the social stigma attached with imprisonment. The facilities provided to them in prisons are also comparatively subsidiary and inferior than what is offered to their male counterparts. Therefore, the Indian Courts have a crucial role to play while developing the Criminal Jurisprudence related to women prisoners. There have been various landmark judgments given by the Indian Courts over these years for protecting and preserving the rights of women prisoners, still their interpretation is lackadaisical and limited.

The right of a woman not to be arrested before sunrise and after sunset is significant since it protects her from mistreatment by police officials. In the case of *Bharati S. Khandharv. Maruti Govind Jadhav*,¹⁹ the petitioner was unaware of her rights under Section 46(4) of the Criminal Procedure Code, 1973. She had been arrested post sunset and suffered mistreatment at the hands of the police officials. The Court ordered the Commissioner of Police to hold an inquiry against the officials involved for illegal detention and arrest. In addition to this, the Commissioner was also ordered to issue directions to the concerned officers to comply with the provisions of Section 46(4) of the Criminal Procedure Code, 1973.

The custodial violence in Indian prisons against women prisoners is rife. It is suffered by all women prisoners whether be it undertrials or convicts. Journalist Sheela Barse visited prisons and wrote a letter to the Supreme Court regarding the violence against women in prisons. This was treated as a Writ Petition by the Supreme Court. The Supreme Court acknowledged the situation and directed for the provision of free legal aid to the poor who are arrested. It stated that such a service is a part of Article 14, Article 19 and Article 39A of the Indian Constitution. It further directed that the social workers make reports related to ill-treatment of female prisoners in the lockups. It further issued the following guidelines in the case of *Sheela Barse v. State of Maharashtra*²⁰:

¹⁹ *Bharati S. Khandharv. Maruti Govind Jadhav* Writ Petition No. 453/2008.

²⁰ *Sheela Barse v. State of Maharashtra* (1983) SC 378

- *“There should be separate lockups for female prisoners and it should be guarded by female police officers only.*
- *Interrogation of the female prisoners should only be done in the presence of female officers only.*
- *The person should be informed about the ground of arrest and provision of bail.*
- *It is mandatory that a female suspect is to be checked by a female police officer only (Section 160(1) of Criminal Procedure Code, 1973).*
- *Women prisoners cannot be arrested after sunset and before sunrise.”*

In the case of *Thana Singh v. Central Bureau of Narcotics*,²¹ the Supreme Court observed that, *“for the prisoner imprisonment as an undertrial is as dishonourable as imprisonment for being a convict because the damning finger and opprobrious eyes of society draw no difference between the two.”* This was a significant decision given by the Supreme Court as the court specifically discussed the rights of women prisoners and gave directions to ensure that there are no untoward incidents during the process of investigation.

7. CONCLUSION

It has been exquisitely stated by **Justice Krishna Iyer** that *“prisons are built with the stones of law.”* However, the women suffer from the brunt of *“patriarchal law.”* There is an urgent need to reform the same and campaign for the rights of women prisoners. The women population should not suffer from incarcerated pregnancies, custodial childbirths, sexual abuse and violence inside prisons. The present state of affair should not violate the golden rules of Natural Justice on which the Civil Liberties of the women inmates rests. Therefore, every endeavour must be made to protect and preserve the rights of women prisoners in India.

There is lots of potential and means to improve the conditions of women prisoners. However, the willingness to execute these programs is largely missing. There is a lack of public outcry and awareness when the rights of the women prisoners are crushed and violated, which in turn obstructs their reintegration into the society. There is no definitive answer towards these inadequacies, ineffectiveness and lack of accountability pertaining to the rights of women prisoners.

²¹ *Thana Singh v. Central Bureau of Narcotics* (2013) Cri. Lj.1262

The flaws in the system have been acknowledged by the Courts. However, if a prisoner is set free after being lodged in a jail, the sense of justice may remain elusive forever. In 2018, the Law Commission in its report on wrongful prosecution and legal remedies recommended enacting a legal provision that would provide relief to victims of wrongful prosecution in terms of monetary and non-monetary compensation (such as counselling, mental health services, vocational/employment skills development etc).

The report stressed, "*There needs to be recompense for the years lost, for the social stigma, the mental, emotional and physical harassment, and for the expenses incurred etc.*" There needs to be accountability to fix the flaws and bring about positive change in the prevailing system. As a suggestion, CCTV cameras can be installed to allow supervision by the senior police officials and the National Commission of Women (NCW).

The legal provisions under Indian laws should be strictly enforced. Section 167 of the Criminal Procedure Code, 1973 can be amended to provide for default bails to the women prisoners once the police custody is completed. This will reduce the number of women undertrials and there abuse in the police custody. The eligibility criteria for the bail of an undertrial women prisoner can be relaxed. The process of inquiry, investigation and final verdict should be made easier for women prisoners which will facilitate the speedier justice. There should also be recruitment of adequate number of women officials in the Women Prisons which will allow for greater level of gender sensitivity and create a safer environment for the women in prisons.

The Indian prisons lack the appropriate facilities for women and they face additional issues due to overcrowding, lack of sanitation and other factors. In addition to this, they often face obstacles in accessing justice through a Fair Trial. Therefore, the Central Government, State Governments and the Supreme Court are making constant efforts to evolve a system which follows the ideals of a fair trial and is competent enough to fight against the cynical side of the criminal justice system, mistrial and miscarriage of justice in India.