Report of National Expert Committee on Women Prisoners

Government of India
Ministry of Human Resource Development
Deptt. of Women & Child Development
Report of the National Expert Committee on Women's Phosphores.

My dear Minister,

The Committee appointed by your Ministry to examine the conditions of women prisoners has completed its labours and I have the privilege to present the end product in the form of a long Report which represents the collective work and combined view of the members.

We have spelt out our recommendations, some of which need immediate action: others are of long-range significance. While women are equal with men under the Constitution their vulnerability in society, and much more so while in custody is well known and forms the raison d'etre of our Committee. The recommendations we have made are designed to remedy the current privations and other maladies and we place considerable emphasis on the participative role of social service organisations, social action groups, individuals and professional institutes in the field of correction, of women and children, and of criminological studies and statistics.

The Committee is gravely concerned about the possible procrastination in the matter of implementation of the proposals and presses you to push forward and ensure that custodial justice for women does not become last in the queue.

We are aware that the Home Ministry, the Law Ministry, the Welfare Ministry and, of course, the Finance Ministry, have to cooperate with your Ministry if the Report is to find fulfilment. We are hopeful that an orchestrated effort will be made so that the stagnation syndrome may be overcome. Let us jointly look forward to a better deal for women in various custodial circumstances.

(i)
The members of the Committee express their grateful thanks for this opportunity given to them to serve in a cause of such great moment as the welfare of womankind.

With regards,

Yours sincerely,

Justice V.R. Krishna Iyer

Mrs. Margaret Alva
Minister of State
Ministry of Human Resource Development
Shastri Bhawan
New Delhi

(Dr. Mrs. Suchha Kaldare)
Aurangabad.
NATIONAL EXPERT COMMITTEE ON WOMEN PRISONERS
1986-87

CHAIRMAN
Mr. Justice Krishna Iyer
Retired Judge, Supreme Court
“Satgamaya”, M.G. Road
Ernakulum, Cochin 682001

MEMBER SECRETARY
Dr. Neera Kuckreja Sohoni
69 Sundar Nagar
New Delhi 110 003

MEMBERS
Mr. L.J. Arora
Director, Jail Training School
Lucknow
Ms. Sheela Barse
No. 3-A, Ratna Deep
29 Juhu Tara Road
Bombay
Ms. Kum Kum Chadda
Hindustan Times
Kasturba Gandhi Marg
New Delhi

Dr. Sudha Bittal Kaladate
Reader, Deptt. of Sociology
Marathwada University
Aurangabad

Ms. Shyamala Pappu
Advocate
Supreme Court
New Delhi

Ms. Sanobar Sekhar
Tata Institute of Social Sciences
Bombay

Ms. C.P. Sujaya
Joint Secretary
Department of Women & Child Development
Government of India
New Delhi

CO-OPTED MEMBERS
Mr. B.R. Atre
Joint Secretary
Legislative Counsel
Government of India
New Delhi

Mr. A.K. Sharma
Director
Ministry of Home Affairs
Government of India
New Delhi
ACKNOWLEDGEMENT

The Committee wishes to place on record its deep appreciation of the assistance derived from Prof. N.R. Madhava Menon, Professor of Law, University of Delhi who has enriched the report and the discussions of the Committee at various stages with his creative suggestions and seminal proposals. We also express our gratitude to Prof. S.M. Diaz Retd., I.G., Prisons, Tamil Nadu and Shri M. Raja, Secretary, State Legal Aid Board, Tamil Nadu who helped the Committee as observers and gave us unreserved help whenever sought drawing on their vast and varied experience in the field.
ACKNOWLEDGMENT

The Committee wishes to place on record its high appreciation of the assistance and cooperation from Prof. C. P. Applasamy, Prof. A. G. S. Prasanna, and Dr. G. V. Rao. The Committee wishes to express its appreciation to the staff of the Department of Agricultural Economics, IIT Madras, for their help and cooperation. The Committee wishes to extend its appreciation to the staff of the Central Agricultural Research Institute, Mylapore, Chennai, for their assistance in the preparation of the report.
# CONTENTS

## PART I

Prolegomenon by Chairman  
Report of the Committee

<table>
<thead>
<tr>
<th>I. Introduction</th>
<th>89</th>
</tr>
</thead>
<tbody>
<tr>
<td>NEC's Composition</td>
<td>90</td>
</tr>
<tr>
<td>Substantive Approach</td>
<td>91</td>
</tr>
<tr>
<td>NEC's Work Plan</td>
<td>92</td>
</tr>
</tbody>
</table>

## II. Historical Context

| Neglect of Female Criminality and Offenders | 95 |
| Evolution of Prison Reform | 96 |
| Custodial Approaches to Women Offenders | 98 |
| Non-Prison Custodial Reform | 100 |
| Custodial Approaches and Police | 101 |
| Welfare Custody and Reform | 103 |
| Constitutional Mandate and Gender Justice | 106 |
| Legal Provision and Custodial Procedures and Safeguards | 106 |
| Judicial Interventions and Custodial Justice | 111 |
| Custodial Justice and Media | 112 |
| Beginnings of Popular Activism by Women | 112 |

## III. Custodial Bias and Women

| Female and Male Criminality | 114 |
| Disparities Between States | 117 |
| Impact of Sentencing | 117 |

## IV. Conditions in Prison

| Institutional Facilities | 124 |
| NEC's Perceptions on Women in Prisons | 126 |
| Physical Structure | 126 |
| Misuse of Women's Jail Space | 127 |
| Classification of Prisoners | 128 |
| Separate Custodialization | 129 |
| Basic Amenities | 130 |
| Medical Care | 130 |
| Children of Women Prisoners | 132 |
| Children of Warders | 134 |
| Children in Prison | 134 |
| Other Aspects | 141 |
| Summary | 141 |
## V. Work and Education in Prison

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illiteracy, Poverty and Criminality</td>
<td>144</td>
</tr>
<tr>
<td>Current Approach to Work in Prison</td>
<td>145</td>
</tr>
<tr>
<td>Women Prisoners and Work</td>
<td>145</td>
</tr>
<tr>
<td>Exploitative Practices and Wages</td>
<td>146</td>
</tr>
<tr>
<td>Absence of Work Activity</td>
<td>147</td>
</tr>
<tr>
<td>Unsatisfactory Work Programmes</td>
<td>147</td>
</tr>
<tr>
<td>Market Rates for Prison Labour</td>
<td>148</td>
</tr>
<tr>
<td>Attitudinal Constraints</td>
<td>149</td>
</tr>
<tr>
<td>Mainstreaming Women Prisoners in Socio-Economic Programmes</td>
<td>149</td>
</tr>
<tr>
<td>Successful Current Experiments</td>
<td>150</td>
</tr>
<tr>
<td>Privatization</td>
<td>151</td>
</tr>
<tr>
<td>Work by Undertrials</td>
<td>152</td>
</tr>
</tbody>
</table>

### Summary

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>153</td>
</tr>
<tr>
<td>A Captive Learner Group</td>
<td>155</td>
</tr>
<tr>
<td>Intensifying Literacy Promotion</td>
<td>156</td>
</tr>
<tr>
<td>Content of Proposed Learning</td>
<td>157</td>
</tr>
<tr>
<td>Use of Meditation</td>
<td>157</td>
</tr>
<tr>
<td>Use of Finer Arts</td>
<td>158</td>
</tr>
</tbody>
</table>

## VI. Organisational Issues

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrealistic Expectations</td>
<td>159</td>
</tr>
<tr>
<td>Absence of Policy</td>
<td>159</td>
</tr>
<tr>
<td>An Ad-hoc Service</td>
<td>159</td>
</tr>
<tr>
<td>An Ill-Planned Organization</td>
<td>160</td>
</tr>
<tr>
<td>A Hybrid Administration</td>
<td>160</td>
</tr>
<tr>
<td>A Closed Environment</td>
<td>161</td>
</tr>
<tr>
<td>Low Staff Morale</td>
<td>162</td>
</tr>
<tr>
<td>Creating a Cadre of Prison</td>
<td>162</td>
</tr>
<tr>
<td>Service and Gender Parity</td>
<td>162</td>
</tr>
<tr>
<td>Problems of Women Staff</td>
<td>162</td>
</tr>
<tr>
<td>No Specific Orientation</td>
<td>163</td>
</tr>
<tr>
<td>Problems of Junior Women Staff</td>
<td>163</td>
</tr>
<tr>
<td>Sustaining Motivation Amidst Unusual Stresses</td>
<td>164</td>
</tr>
<tr>
<td>Other Inequities</td>
<td>165</td>
</tr>
<tr>
<td>Summary</td>
<td>166</td>
</tr>
</tbody>
</table>

## VII. Women in Non-Prison Custodial Institutions

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rationale for Custodialization of Women</td>
<td>167</td>
</tr>
<tr>
<td>Statutory Provisions</td>
<td>168</td>
</tr>
<tr>
<td>Tardy Enforcement</td>
<td>176</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>X. Women in Custody for Immoral traffic and Prostitution</td>
<td>206</td>
</tr>
<tr>
<td>Information Gaps</td>
<td>206</td>
</tr>
<tr>
<td>Hidden Criminality</td>
<td>207</td>
</tr>
<tr>
<td>Limitations in Existing Approach</td>
<td>207</td>
</tr>
<tr>
<td>Recasting the Earlier Approach</td>
<td>208</td>
</tr>
<tr>
<td>The Social Worker’s Optic</td>
<td>209</td>
</tr>
<tr>
<td>Culpability of the Client</td>
<td>209</td>
</tr>
<tr>
<td>Operational Problem Areas</td>
<td>210</td>
</tr>
<tr>
<td>Remand</td>
<td>210</td>
</tr>
<tr>
<td>Referral</td>
<td>211</td>
</tr>
<tr>
<td>Length of Custody</td>
<td>211</td>
</tr>
<tr>
<td>Use of Bail</td>
<td>212</td>
</tr>
<tr>
<td>Medical Aspects</td>
<td>213</td>
</tr>
<tr>
<td>Disposal</td>
<td>214</td>
</tr>
<tr>
<td>Special Courts</td>
<td>214</td>
</tr>
<tr>
<td>Operational Proposals</td>
<td>215</td>
</tr>
<tr>
<td>Penal Aspects</td>
<td>217</td>
</tr>
<tr>
<td>Pre-emptive Action</td>
<td>219</td>
</tr>
<tr>
<td>XI. Conscientizing the System</td>
<td>220</td>
</tr>
<tr>
<td>A. Judiciary and the Prisoner</td>
<td>222</td>
</tr>
<tr>
<td>Sensitivity Towards Women</td>
<td>224</td>
</tr>
<tr>
<td>Enlightened Sentencing</td>
<td>225</td>
</tr>
<tr>
<td>Sentencing Alternatives</td>
<td>225</td>
</tr>
<tr>
<td>Code of Conduct and Disposal of Cases</td>
<td>226</td>
</tr>
<tr>
<td>A Probing Outlook</td>
<td>226</td>
</tr>
<tr>
<td>Arrest Procedures</td>
<td>227</td>
</tr>
<tr>
<td>Judicial Review of Crime and Custody</td>
<td>228</td>
</tr>
<tr>
<td>Additional Courts</td>
<td>229</td>
</tr>
<tr>
<td>Protected Representation</td>
<td>230</td>
</tr>
<tr>
<td>B. The Legal Profession</td>
<td>230</td>
</tr>
<tr>
<td>Code of Conduct</td>
<td>231</td>
</tr>
<tr>
<td>Special Stance vis-a-vis Women</td>
<td>231</td>
</tr>
<tr>
<td>Involving Women</td>
<td>233</td>
</tr>
<tr>
<td>C. The Police</td>
<td>234</td>
</tr>
<tr>
<td>Devising Model Manuals</td>
<td>234</td>
</tr>
<tr>
<td>Injecting Police Accountability</td>
<td>340</td>
</tr>
<tr>
<td>Legal Literacy</td>
<td>237</td>
</tr>
<tr>
<td>Enforcing Police Responsibility</td>
<td>238</td>
</tr>
<tr>
<td>Towards Women</td>
<td>239</td>
</tr>
<tr>
<td>Training for Sensitization</td>
<td>240</td>
</tr>
<tr>
<td>Topic</td>
<td>Page</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Women in Police Custody</td>
<td>170</td>
</tr>
<tr>
<td>Infrastructure and Intake</td>
<td>170</td>
</tr>
<tr>
<td>Data Constraints</td>
<td>171</td>
</tr>
<tr>
<td>Conditions in Police Custody</td>
<td>171</td>
</tr>
<tr>
<td>Lack of Amenities</td>
<td>172</td>
</tr>
<tr>
<td>Length of Custody</td>
<td>173</td>
</tr>
<tr>
<td>Wrongful Custody</td>
<td>173</td>
</tr>
<tr>
<td>Custodial Abuse</td>
<td>174</td>
</tr>
<tr>
<td>Gender Indignities</td>
<td>175</td>
</tr>
<tr>
<td>Other Irritants</td>
<td>175</td>
</tr>
<tr>
<td>Procedural lapses</td>
<td>176</td>
</tr>
<tr>
<td>Remedial Action</td>
<td>177</td>
</tr>
<tr>
<td>Impact</td>
<td>178</td>
</tr>
<tr>
<td>Involving Women Police</td>
<td>179</td>
</tr>
<tr>
<td>Interim Remedies</td>
<td>180</td>
</tr>
<tr>
<td>Permanent Measures</td>
<td>180</td>
</tr>
<tr>
<td>Women’s Police Stations</td>
<td>181</td>
</tr>
<tr>
<td>Women’s Assistance Police Unit</td>
<td>182</td>
</tr>
<tr>
<td>Special Obligation to Women</td>
<td>184</td>
</tr>
<tr>
<td>Reformed Ethos</td>
<td>184</td>
</tr>
<tr>
<td>Summary</td>
<td>184</td>
</tr>
<tr>
<td>Crime Information and Intelligence</td>
<td>186</td>
</tr>
<tr>
<td><strong>VIII. Women in Social Welfare Custody</strong></td>
<td></td>
</tr>
<tr>
<td>Organization</td>
<td>189</td>
</tr>
<tr>
<td>Types of Institutions</td>
<td>190</td>
</tr>
<tr>
<td>Mixed Custody</td>
<td>190</td>
</tr>
<tr>
<td>Limitations of Institutionalization</td>
<td>191</td>
</tr>
<tr>
<td>Graded Custody</td>
<td>192</td>
</tr>
<tr>
<td>Legal and Administrative Streamlining</td>
<td>192</td>
</tr>
<tr>
<td>Institutional Performance</td>
<td>193</td>
</tr>
<tr>
<td>Amenities</td>
<td>193</td>
</tr>
<tr>
<td>Security and Moral Hygiene</td>
<td>194</td>
</tr>
<tr>
<td>Low Intake</td>
<td>195</td>
</tr>
<tr>
<td>Situational Study</td>
<td>196</td>
</tr>
<tr>
<td>Monitoring and Accountability</td>
<td>196</td>
</tr>
<tr>
<td>Summary</td>
<td>196</td>
</tr>
<tr>
<td><strong>IX  Women in Mental Health Custody</strong></td>
<td></td>
</tr>
<tr>
<td>Limitations in Existing Laws</td>
<td>199</td>
</tr>
<tr>
<td>Alternate Placement</td>
<td>200</td>
</tr>
<tr>
<td>NIMHANS as a Paradigm</td>
<td>201</td>
</tr>
<tr>
<td>Social Acceptance and Understanding</td>
<td>201</td>
</tr>
<tr>
<td>Medical Infrastructure</td>
<td>202</td>
</tr>
<tr>
<td>Using Professional and Para-Professionals</td>
<td>203</td>
</tr>
</tbody>
</table>

(ix)
D. The Prison Official
- Key to Custodial Reform 242
- A National Cadre Service Training 242
- Specialized Handling of Mentally Distressed Active Reaching out by a Social Worker 243
- Counselling of Staff and Inmate Training of Women Staff 244
- Code of Conduct 245
- Investigative Malfunction 245
- Corruption 246

E. The Prisoner
- Custodial Bias 247
- General Bias 248
- Ignorance of Rights and Lawful Procedure 249
- A Handbook of Rights 250
- Prison Manuals 250
- Association of Para-legal and Social Workers 251
- Emotional Mainstreaming 251
- Non-Official Visitors to Prisons 252
- Socio-Legal Counselling Cell 253
- Bandi Sabha 253
- A General Issue: Women’s Dignity in Custody and Outside 255

XII. Legal Aid to Women in Custody
- A Constitutionally Mandated Right 256
- Improving the System 257
- Code of Legal Ethics 257
- “First Aid” Workers in Law 258
- Role of Private Voluntary Organization 258
- Legal Aid To Those in Mental Custody 258
- Legal Awareness Among Women 258
- The Impact of Media 259

XIII. Innovative Mechanism in Gender Justice
- Other Provisions 260
- Innovation in Sentencing 261
- Simple Imprisonment 261
- Probation 262
- Aftercare 264
- Parole 267
- Appropriateness of Innovative Sentencing for Women 267
Equitable Sentencing 268
Nari Bandigriha Adalats 269
Mahila Nyayalayas and Family Courts 269
Summary 269

XIV. Participative Mechanisms 272
Fitting Participation in an Authoritative Structure 272
Associating Women with Delivery of Justice 273
Women as Special Executive Magistrates 273
Experiments in Participation 274
Watchdog Role 275
Involving Women's Groups 277
Media's Input 279

XV. Concluding Observations 279

Custodial Status: an Extension of
Women's Status in Society 279
Custodial Situation: A Consequence of Archaic Law 279
Factors Conditioning the Treatment of
Women in Custody 279
Back Up Support by Family 280
Women's Own Limitations and Institutional Neglect 280
Varying Degrees of Custodial Neglect 281
Limited Size and Specialized needs of
Women in Custody 281
Bias Towards Custody 282

PART II

Recommendations Arising: An Agenda for Reform 287
Towards a Concerted Approach 287

I. Policy Making and Monitoring 287
Policy Guidelines 287
National Policy on Custodial Justice to Women 288
National Authority on Custodial Justice to Women 288
Composition on NACJW 288
Terms of Reference 289
Monitoring 289
Ombudsman for Custodial Institutions for Women 290
Counterparts at State Level 291

II. Enforcement 291
A. Judicial 291
Family Courts Vs. Separate Courts for Women 291
Separate and Specialised Modalities for
Dispensing Justice to Women 293
PART - I
PROLEGOMENON OF CHAIRMAN

GENDER JUSTICE IN CONDITIONS OF CUSTODIAL CRISIS:
SOME CREATIVE PROPOSALS

"There will never be a generation of great men until there has been a generation of free women — of free mothers."

ROBERT G. INGERSOLL

"This too I know—and wise it were
If each could know the same —
That every prison that men build
Is built with bricks of shame.
And bound with bars lest
Christ should see
How men their brothers maim."

***

"The vilest deeds like poison weeds
Bloom well in prison-air:
It is only what is good in Man
That wastes and withers there:
Pale Anguish keeps the heavy gate,
And the Warder is Despair."

- OSCAR WILDE: The Ballad of Reading Gaol

"Article 51A — Fundamental duties — It shall be the duty of every citizen of India —

(e) * * * * * to renounce practices derogatory to the dignity of women."

1
A Personal Explanation

I write this chapter as chairman of the Committee taking a certain pardonable liberty. A brief Prefatory Explanatory of my involvement may be a natural Introductory to the labours of the Committee. One drab morning, my dak surprised me with a communication from the Department of Women and Child Development niced within the sublimely broad-spectrum Ministry of Human Resource Development, requesting me to be Chairman of a Committee to examine the conditions of Women caught in the Criminal Justice Process and to make recommendations for amelioration of their custodial afflictions and restoration of their damaged dignity. The cause, in all its dimensions, was so close to my heart that the instant reaction was to agree and make some creative contribution, however humble, in the practical province of jail justice and gender jurisprudence.

But some hesitation haunted my bosom. In our set-up, the price of radicalism, even if it be steeped in humanism and sanctioned by the Constitution, is that any assessment however thoughtful, finds its relentless fate, after tedious notings upon notings ad libitum by the various Cells and Groups in the many Ministries, into the cemetery of slumbering recommendations of Committees and Commissions. Afraid of this ill-starred kismet, I enquired of that gracious lady, the Hon’ble Minister Mrs. Margaret Alva, whether I should head the team. Her sensitivity was refreshing, her insistence persuasive and her concern soothed my soul. I have found Mrs. Alva long committed to progressive causes. So I decided, in tune with her wishes, to play the Chairman of the Committee. When the zeitgeist summons and the issue is of humane moment, everyone with a conscience must respond. The labours of the present Committee belong to that uplifting category and I am, with my activist sisters, a restless partner in the battle for humanising custodial legality and innovating realistic modalities with focus on womanhood.

Why A Prolegomenon?

I have chosen to write this separate and long Prolegomenon for dual purposes viz. to preface the Report with some personal views and to interpret in advance the ideology underlying the Chapters ahead which crystalise the Committee’s consensus proposals. While my individual thinking
broadly flows along the stream of the collective thinking of the group, some of my opinionated views may seem debatable to others in the team. This solo essay is an indulgence to the head of the team, not a right of the Chairman. In a general way it may well be regarded as an Introductory to the Report, subject to the rider that no member is bound by what is said here.

Even at this stage it behoves me to state that the members of the Committee, including me, shared a common vision and showed a deep commitment to the mission of the joint adventure. The Member Secretary impressed me with her wide scholarship, loyalty to gender justice and professional ability to absorb information, understand the other person’s ideas and weave into the garment of the Report: the diverse views of various members, with an eclectic flair. The other partners in the labours of the cooperative effort were all exceedingly devoted to the cause. We have many distinguished crusaders in the field. One of them has been fighting litigative battles and her victories are indelibly inscribed in the Law Reports. Another has to her credit, long professional service geared to gender justice. Yet others have brought to bear the social scientist’s insights blended with academic depth, and the rest who have all given of their knowledge, talents and fair familiarity with the working conditions in custodial institutions.

The few official nominees did, within their time constraints, make their expert collaboration helpfully. Happily, a versatile jurist from Delhi University committed to the cause and a couple of veterans from Madras, rich in rare experience, joined our labours to the extent time and distance accommodated. But one handicap we all shared, one touch of Nature made us kin. We were, each one of us, burdened with other undertakings of our own which made claims on our budget in time. Inevitably, despite the spirit being willing, the physical unavailability of time made many of us part-timers under pressure and honorary donors of limited attention. I was more delinquent than the rest in this regard.

The motivation and remuneration for these free toils is the satisfaction that we strive to bring upfront women who live in custodial invisibility. I must register my personal gratitude to the family making up this Committee for the regard they showed me, deserved or no. All of us are appreciative of the opportunity Mrs. Alva gave us to serve on the ‘Commission’ though budgetary limitation, absence of full-time staff
sanction and difficulty in acquiring relevant data from State, even Central, departments and institutions subjected us to some starvation of intelligent information and famine of meaningful consultation. Our travails become worthwhile only when the Report goes operational. That depends on a conscientised Administration and the intrinsic worth of our end product.

The journey to gender justice is long; the battle for equity and equality for the weaker sex, amidst feudalist inhibitions, is on. I have no illusion about execution so long as slow motion implementation is the syndrome of State Administration. The Family Courts Act and Equal Wages Act, et al., have demonstrated, that excellence of text may co-exist with poverty of performance. Numberless national commissions are an a fortiori case of sleeping sickness. Still there is hope that some action will happen and that, as Churchill stated, our report "is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning."

A preliminary meeting of the Committee unfolded the central issue before us. The Indian woman has problems of disability, cultural, enviromental, economic, matrimonial and other, which makes her peculiarly vulnerable in law and in life, constitutional egalite notwithstanding. The spectrum of gender injustices spells beyond and before police stations, coercive houses, remand homes and prison cells, and a fair appraisal of the benign spread-out of our terms of reference justly embraces conditions in all custodial and quasi-custodial institutions, the pathological adversities she faces in the justice processes and the restorative procedures she needs to regain her social, economic and even domestic dignity. The juvenile centres with girl inmates, the rescue homes with welfare orientations, the psychic sanctuaries for mentally ill persons, the beggar homes for the waifs and strays, the leprosaria and other havens like abala mandirs, observation homes and reception centres which are asylums with restriction on movement, apart from the standard detention institutions where the police-prison writ runs supreme — all these custodial campuses come within our larger ken, if generously understood. Even social pressures which compel women into crime willy nilly and make a villain of victim, as in I.T.P.A cases, deserve our considerate survey. It is tragic but true that the weaker gender is denied free development in the feudal milieu
of masculine ethos. She is more sinned against than sinning. This sorry situation calls for diagnosis, prophylaxis and prognosis. Crime is but a breakdown syndrome under psychic stress, and the curative process is habilitative release of tension, as stressologists argue. So, if women in crime are to be saved, strategies of stress release, appropriate to her social surrounding, must be devised.

This criminological challenge demands innovative technology currently absent in most institutions. Even enlightened managers of prisons have negative approaches or marginally useful tools like industries and wageless work. And when it comes to women, their small numbers and short term jail tenancy are used as alibi for avoiding even work therapy except on paper. And even as medical mismanagement may prove iatrogenic, negative jail drills may produce progressive mental degeneration. Likewise, post-prison follow-up or after care is integral to custodial justice even as intensive care procedure and post-operative vigilance are relevant for the patient's recovery, beyond mere surgery. This panoramic perspective persuaded the Committee, with the tacit assent of the Ministry, to adopt a wider vision not a blinkered view, and reach out to regions out of bounds for us if a narrow construction of the terms of reference were to prevail.

Even so, perspectival consensus was not hundred per cent attained. On some crucial ideas there was dissent from a few members whose field experience was considerable and self-assertion forceful. Minds differ as rivers differ, and large, small, deep and shallow waters are part of the functional democracy of committee unanimity. It is a gladsome note that the Report, in a stroke of give and take, has broad support from all the members.

The State in the past, has produced progressive projects, legislative, administrative and judicial, which are marvels of gender justice on paper. When it comes to social engineering and effective implementation through passionate action by convinced agencies, performance audit draws a blank, despite sound and fury in publicity, official exercises in futility and forensic fireworks dying in the sky. Ability to impact on the ground is the oxygen of any welfare project. A frontal attack on the non-implementation disease is the desideratum. What we need is the methodology of actualisation of welfare measures, the mechanisms for prompt correction of distortion and
independent watch-dog operations and a firm feeling in society that what has been promised shall come to pass and not be an addition to the crowd of great expectations aborted during gestation.

The Panchsheel of National Policy on Custodial Justice for Women

Law is what law does, as I have said often and women in custody are tragic testimony of judicial futility, statutory impotency and implementational calamity.

There have been rulings of the highest court which have radicalised penological thought. The seed will sprout, ones sown, when the time is ripe. Likewise, there are socially oriented enactments, like the Family Courts Act, the Juvenile Justice Act, and the Mental Health Act which partially or in totality will do credit to any progressive State, although they may need some reform. Many police and prison officers, men and women, are unbelievably humanist. The negative thought that nothing will succeed must be dissolved and positive hope that reforms will work must be kindled.

Our job is not to tinker with minor changes but engineer major reforms. But certain policy parameters must delight our deliberations and guide our recommendations. I call them the Panch Sheel of National Policy on Custodial Justice for Women, the human coverage being women (including girls) and children who come with mothers, being too young to be separated or are born while the woman is in prison. The worth of our endeavours depends on the goals we set for ourselves. A radical project must possess a radical theory, pragmatic strategy, mechanisms with functional specificity and cadres with a work ethos pledged to fulfilment of the objectives animating Project Custodial Justice - 'Destination Deliverance of Womanhood from Indignity. I borrow the expression 'dignity' here from the Constitution itself where it bears the broadest sense of the human essence and worth of one's personality even in misery and poignancy. From this angle, a policy paper explanatory of the State's clear stand on Women in Crime - on renouncing practices derogatory to the dignity of women, on creating sensitive mechanisms for protection of the weaker sex when arrested, imprisoned or otherwise detained and on habilitative strategies tuned to the special needs of women under stress — is functionally important to guide the
instrumentalities of the State and the officers who perform delicate operations where women are under State duress. Such a National Policy Statement is necessitous. The Report, in a later chapter, gives the Committee's blue-prints of this Policy Statement.

Now to the five factors which have played on us making this Report.

The first paramount factor which has conditioned our recommendations is the Constitution itself. The constitutional fundamentals pertinent to our purpose are found in Part III and VI A. They bind, and therefore, direct our national navigation towards a police-prison policy. The weaker gender is, by far, the victim sector. And the constellation of principles for protection of women in state servitude is available in the suprema lex to form the cornerstone of national penal policy. Briefly, they are implicit in the Preamble itself, and, in articles 14, 15(1) and (3), 16(2), 19, 21, 22(2), 23, 39(a) (d), (e) and (f), 39A, 43, and 51A (e). Women's human rights are vivified by these provisions. Alas, the Constitution, in its value dimensions, is a mental alien to the coercive operators in the Administration. Our task is to change this.

Secondly, there is a first cousin of the Constitution to serve us as mariner's compass; I mean case-law in the field. We are governed by the Constitution but the Constitution is what the judges say it is (vide Art. 141). And today the Supreme Court of India, in a creative burst of constitutional interpretation and refined directions, built up a luminous custodial jurisprudence which even supersedes, pro tanto, the various legislations which currently regulate the condition of women and children cast into state custody. Our Committee would not and the State could not defy or deny judicial rulings. These rulings are beacon lights and suggest humane mutations in confinement centres. Our proposals must respectfully pay homage to these humanist pronouncements. The relevant rulings, with annotative observations, form an appendix to our Report.

Thirdly and most emphatically, comes the duty to take cognizance of the emerging international legal order relating to custodial conditions and correctional obligations and concern for women and children. Similarly, our national custodial policy, must be supportive of the finer cultural heritage mandated by Art. 51A (f) and supplantive of the colonial callousness still haunting state methodology. A
confluence of these two streams, Indian and international must chasten the changes we recommend.

The Universal Declaration of Human Rights, the two Covenants following thereon, the Declaration on Elimination of Discrimination Against Women, the International Standards of prisoner's rights and prison objectives and a wealth of ameliorative instruments, regional and other, which bear upon women's rights and gender justice, are part of the cosmic corpus juris and inform the world legal order. Under Article 51 of our Constitution there is an obligation to foster respect for International Law. Therefore, the principles formulated in International Instruments impact on India's juridical culture. Our great country, with all its hopes of gender humanism, will never live up to the philosophy of custodial fair deal, particularly to our women painfully unfree or invisibly walled off, until we implement the rules and standards of custodial decency codified by the collective conscience of the world community. The Charter of the United Nations is the womb of this burgeoning jurisprudence which affirms 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women' and better standards of life in freedom. Enlivened by this higher hunger existing laws must be amended vis a vis women. The Declaration on Elimination of Discrimination Against Women, for instance, states categorically that "all provisions of Penal Codes which constitute discrimination against women shall be repealed" (Art.7). Art. 10(3) affirms that "measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory" Art. 11(2) is also pertinent.

"Government non-governmental organisations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in their Declaration."

The new wave in penology has global beginnings. The U.N. Charter has put human rights on a higher footing than ever before and has spawned new ideas on prisoner's personhood and consequential rights:

that 'the basis of training must be to accord to the prisoners the respect due to their dignity as human beings and to establish in them a will to lead a good and useful life on discharge and to fit them to do so.' The Assembly, of the United Nations on the 6th December 1966, in the International Covenant on Civil and Political rights adopted unanimously the following resolution regarding the rights of prisoners:

**Article 10**

1. ALL PERSONS DEPRIVED OF THEIR LIBERTY SHALL BE TREATED WITH HUMANITY AND WITH RESPECT FOR THE INHERENT DIGNITY OF THE HUMAN PERSON:

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

   (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

In the successive International Congresses held one in every five years,* a review of the progress made in implementing the earlier resolutions on the subject was made and helpful suggestions were given to the various governments. In the Second Congress held in London in 1960, one of the important resolutions was 'the Prisoner must be prepared as a free man in the community during the entire period of his detention. In the Congress of 1970, while reviewing the Criminal Policy in the World, it was observed, 'Prevention of Crime and the social rehabilitation of criminals can benefit from general and specific measures adopted in the field of social action outside the

* For this concise review of international developments in penology I am indebted to the late Justice Narasimhan, Chairman of the erstwhile Tamil Nadu Jail Reforms Committee.
criminal law.’ It was further emphasised by some speaker that ‘Criminal Law and Criminal Justice system are not static because they answer social need which change continuously from time to time.’

In the Congress of 1975, held at Geneva, it was again reiterated:

‘The modern trend is to eradicate the cause of crime rather than the criminals by educative, corrective and reformative methods.’

Our Report takes its cue from these perceptions.

Now to the fourth major consideration and the raison d’etre for it. To be effective as a well-spring of inspiration for all situations we need a national philosophy governing standards of custodial justice sensitive to that sex which is specially vulnerable to aggravated mayhem on her dignity, personality and physical security. What I argue in anguish is for an authentic official philosophy of penal justice and confinement culture. Do we believe in ‘third degree’ torture while in police custody, brutal treatment in jail bondage, psychic laceration within lunatic asylums and eye-for-an-eye sentencing by judicial bigots? These may sound atavistic or sadistic but are current noises in high places. Did not a person sitting in the Speaker’s Chair in a southern state shock the country by justifying third degree torture? Did not the Home Department of another southern state, as late as 1986, sustain without embarrassment the right to make people near-naked in the police lock-ups on the absurd alibi of possible suicide? Are not hateful hand-cuffs popular with the police even though it is unlawful, according to the Court? Do we regard refusal of bail a secret mode of punishment vicariously visited on an arrestee who may well be acquitted, remembering that the conviction rate is a small percentage? Do we demand hard conditions in prisons, wageless slavery and solitary confinement in jail as strategy of deterrence? And the practice persists even after Supreme Court has frowned on it? Do we inflict, as in many state-run lunatic institutions we now do, iatrogenic dehumanisation within mental hospitals as a therapeutic process and why do we nesciently, as we tragically often do now, lump lunatics, criminal and non-criminal, into prisons not hospitals? Do we classify and segregate or conglomerate and contaminate prison populations, some hardened criminals,
some accidental neophytes, some sentenced convicts, some only undertrials presumed innocent?

For a State to cast into prison, with reckless turpitude, non-criminal lunatics or in plain words, unfortunate mentally disordered innocents, is itself criminal. Are we committed to a Gandhi-Nehru approach to jails as hospitals and to a habilitative methodology inside by mainstreaming inmates to live honourably in society? Today, humane diction and daily contradiction shame our institutions. Even beggar homes beggar description, as I discovered in several Indian cities, without meaning any pejoration on many humane institutional officials and movingly committed service-oriented social activists. Often, the system is sinister and the sinner. Do we stand by compassion and dignity and serve womanhood's peculiar susceptibilities and needs? Without a healthy philosophy, the State's instrumentalities sometimes run berserk or behave dubiously and the praxis of the system resist karuna and daya as mawkish coddling. So, if we mean a breakthrough I think we have no option — we must define the proposition that our prison policy is not zoological but compassionate and that womanhood and childhood, even in their criminal wrappings and behavioural aberrations, deserve to be nursed in dignity and restored to working normalcy, using all the material, moral and spiritual resources at society's command. That is the tribute to the global wave of human rights. Paradise Lost to Paradise Regained vis-a-vis women delinquent and juvenile aberrants, female 'mentals' and victims of broken homes, is a journey of social justice through hospital process and retrieval of the human essence that flames within everyone even if smoked or smogged for short or long spell. If society itself is sadist, stressful or philistine, it is criminal. A finer philosophy of rehabilitation is the only panacea for the pathology of punitive barbarity. Winston Churchill, even in his tough old days as Home Secretary, stated in the House of Commons:

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm dispassionate recognition of the rights of the accused and even of the convicted criminals against the State; a constant heart-searching of all charged with the deed of punishment: tireless efforts towards the discovery of
regenerative processes; unfailing faith that there is treasure, if you can find it, in the heart of every man. These are the symbols which in the treatment of crime and criminals make and measure the stored-up strength of a nation and are sign and proof of the living virtue in it."

[The English Penal System-277]

Gandhiji, with practical humanity and long experience in British prisons, pleaded:

"I know that revision of classifications, according to my suggestion, means a revolution in the whole system. It undoubtedly means more expense and a different type of men to work the new system. But additional expense will mean economy in the long run. The greatest advantage of the proposed revolution would no doubt be a reduction in the crimes and reformation of the prisoners. The jails would then be reformatories representing the society sinners as its reformed and respectable members. This may be a far-off event. If we were not under the spell of a long-lived customs, we should not find it a difficult task to turn our prisons into reformatories."

[Report of the All India Committee on Jail Reforms 1980-83-Vol. I page iii]

Sri A.N. Mulla, in his preface to the Jail Reforms Committee Report, quotes Gandhiji:

"As an old and experienced prisoner, however, I believe that Government have to begin the reform.... Humanitarians can but supplement government efforts. As it is, the humanitarian, if he attempted anything will first have to undo the mischief done in prisons where the environment hardens the criminal tendency, and in the case of innocent prisoners, they learn how to commit crimes without being detected. I hold that humanitarian effort cannot cope with the evil wrought in the jails."

[Ibid, page .ii]

Jawaharlal Nehru whose life in prison persuaded him in a later article to stress "the absolute necessity of having a competent humane staff fully understanding and appreciating the new angle of vision and eager to work it", stated what to my mind is axiomatic:

"I wish some of our people would study and, where possible personally inspect, prison conditions in foreign
countries. They will find how our prisons lag far behind them. The new human element is imposing itself everywhere, as also a recognition of the fact that a criminal is largely created by social conditions and, instead of being punished, has to be treated as for a disease.”

[ Ibid page iii ]

The progressive chemistry of penal policy is compounded of the molecules of the right to life and personal liberty, albeit within incarceratory limitations, the duty for the values of compassion, dignity of the individual, equality and fraternity. The Supreme Court of India, a decade ago, set its seal on the restorative, as against the retributive, the healing as against the hurting approach to convicted humans. In Mohammed Giasuddin vs. State of Andhra Pradesh (AIR 1977 Sc 1926), the Supreme Court dealt at length on the mode of treatment of criminals in prisons, the principles of punishment and other allied matters. The following extracts may be quoted.

"Criminality is curable deviance. It is thus plain that crime is pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge.

The human essence of the Constitution is captured here. The Sobraj Court expanded on this thesis and wrote:

"Every prison sentence is a conditioned deprivation of life and liberty, with civilized norms built in and unlimited trauma interdicted. In this sense, judicial policing of prison practices is implied in the sentencing power. The Criminal judiciary have thus a duty to guardian their sentencees and visit prisons where necessary. Many of them do not know or exercise this obligation...”

Of course, society must strongly condemn crime through punishment but brutal deterrence is fiendish folly and is a kind of crime by punishment. It frightens, never refines; it wounds, never heals. Progressive penology must gravitate towards the therapeutic processes which heal and humanise, restore and socialise, reconcile criminal punishment with dignity of personhood.

The New Penology sets much store by rehabilitative philosophy. Its spiritual core is the acceptance of human divinity and its social fall-out, the regeneration of the convict's
basic goodness and authentic stature. Every saint has a past and every sinner a future. This profound shift is in harmony with the Charter and Covenants which are currently inspiring the international order and many constitutional manifestos like our own. If the word of Chief Justice Warren Burger will strengthen my submission, let me quote him:

"Even in this day of necessary budget austerity, I hope that the President and the Congress, in whose hands such matters must rest, will be willing to consider these two modest, but important steps. No one can guarantee results, but if we accept the moral proposition that we are our brothers' keepers and that there is a divine spark in every human being — hard as that is to believe at times — we must try."

Now comes the historic hour for a national acceptance in India of this social philosophy and inclusion of it in sure though shorthand form in the Policy Statement. But philosophy fails if the oxygen to give it life is not supplied. Here, cadres are crucial and function-specific apparatuses critical. That is the fifth fundamental, forgetfulness of which has been fatal to the finest projects of social welfare. Therefore, we need a complex of mechanisms geared to the successful implementation of the new deal we design, including cadre culture, since cadres are everything. The battle for implementation is where the war is won or lost.

Where women meets the police in uniformed power or enters the prison gates where iron speaks, where lunatic institutions deepen her mental disturbance by looney praxis, where reformatories achieve reverse results by reinforcing because no reform technology is pursued, where even beggar homes are bankrupt of benign functions, all projects for regaining a woman detainee's dignity and re-humanising her criminalised personality break down. A fresh current of institutional changes and a vigorous wave of cadre education oriented on the values enshrined in the evolving philosophy of custodial justice are high on the agenda.

At least seven components of such an implementation-effective system may be identified.

They are:

(1) the training and culturing of the human resources operating the system and the changes to be wrought in them
and, through them, in institutional practices;

(2) sensitive laser-like access mechanisms for prompt remedial justice within detainee's reach where violations occur beyond the visibility range of the law;

(3) Ombudsman-like machinery for detection, correction and policing of the police and other coercive agencies by way of prophylactic, punitive and overseeing action;

(4) a national network, with a free mix of voluntary activist, for improving the quality of correctional service, for the better superintendence, direction and control of custodial justice in action and for feed back from the field into the system and for policy decisions from time to time.

(5) an effective and pervasive project of statutorily supported and specially designed free legal services schemes for women under custodial disablement so structured as to secure legal justice on many fronts, including on matters unconnected with custody but personal to the detainee, to impart legal literacy needed to create confidence in her rights;

(6) new organisations for defending womanhood, when imperilled, through the entire gamut of situations from the conditions conducing commission of crime to police, prison, curial and like processes and onward to habilitation homes and curative regimes including work therapy, employment placement, marriage opportunities and so on.

(7) above all, we need prison house with new designs and facilities, recreational measures, educational as also art-craft opportunities, work with wages and conditions for self-development.

Specific to women more women in the system; better gender sensitive training for the younger staff and refreshers for the elder echelons; newer buildings like cottages or women's hostels; re-structuring of the working processes within these habilitation homes so that less tension, more freedom, better and more useful crafts which will make her a self-reliant member on release, and so on, are practical experiments worth a trial.

Finally comes the creation of comprehensive National Authority with multi-purpose responsibility and representative composition, operating directly and through similar State level replicas and lesser level organs, charged with giving effect to
the Panch Sheel above enumerated. The body of our Report addresses itself to this proposal but I may as well throw some light on its daily utility. Any ideology can take off only if machine and man, fine-tuned to the delicate demands, are viably set up and master-minded by an action-oriented pyramid of Power saddled with accountability. Hence a National Authority.

Gita in Kurukshetra can succeed only if, beyond chant, a Krishna trains an Arjuna to develop a new courage and culture to crush injustice. Krishna, Arjuna and Gita are all critical. The insistence on correct cadres and systems is vital. A liberation theology and liberation army, with a avant garde High Command, go together.

Now, our Report contemplates one fundamental postulate, viz: that women have a special claim to compassion, defence of dignity and human rights and protection of her sensitive needs and personal integrity. The State must secure for her this dimension of social justice while she is in peril or under the process of being custodialised in a manner detrimental to her womanliness.

The thrust of the case made out in the Report is that a radical experiment in the processes and personnel must be organised, not from the top of the pyramid only but from the base as well, involving a wide variety of social, professional and official pillars to support the national directorate and sub-structures.

Operational accountability and monitoring efficiency are a sine qua non of any welfare machinery. So social scientists ask who will police the police when they abuse power, who will discipline the prison staff when they go awry, instil a sense of answerability in the instruments of control and custody, sound the tocsin when disorder upsets the new regime, and watchdog the new women's tribunals and correctional techniques designed for restorative justice. Should we not have an apex policy-making think-tank and implementing directorate bringing together all the elements involved for collectively discussing and frequently interacting, with horizontal and vertical infrastructures and power to oversee and correct, enjoying statutory autonomy and representing both the official and voluntary sectors involved in the new experiment? Should there not be a periodic reckoning and reporting so that the
legislature and the lay populace may be informed of the audit and constructively react to the result? In short, we must have a National Authority on Custodial Justice to Women (NACJW) with powers and responsibilities, with infrastructure, horizontal and vertical, whose paramount duty is to check performance, shape policy, deter disorder in the new system, intervene where signs show up of the machine becoming dysfunctional and report to the nation periodically, and through research and development, suggest new models for functional betterment.

The grammar of custodial justice, in its affirmative version, must impact on institutional functionalism. A run-down of the current vices and shortfall is the first step before suggesting appropriate remedies. We have clear evidence that at present women are warehoused, as it were, in a welter of divergent institutions largely controlled and virtually directed from top to bottom by the masculine sex. In mental hospitals, women are rightless. In rescue homes, her very entry brands her professional prostitute. Again, she is a discriminated gender further victimised even if she is the victim of crime. There are many shades and dimensions to her discriminatory kismet.

The adverse vicissitudes of women in custody are not stray phenomena but wide-spread and deep-rooted in the system. I visited many institutions in the south and some in the north and all of them shared in varying degrees, one major flaw that in the larger scheme, women do not matter or at least matter less, whatever the custodial institution be. A few observations about what I witnessed in various cities will bring home the point.

On the whole, the jails for women, rescue homes and centres for female retardates and mental hospitals in a southern city presented a better picture than in several other cities. Of course, NIMHANS, run by the Central Government with remarkably progressive, extremely competent and highly committed top brass, disapproved many diehard myths about the incurability of chronic lunatics and the impossibility of song and dance, work and play as effective ways of redeeming the depressed sisters. It was a refreshing discovery to see the smiling recovery of the many mentally disturbed females in that hospital.

The Director of the Institute (NIMHANS) and the Superintendent of the attached mental hospital took happy pride in their success in wiping every tear from every eye to the
extent it fell to their part. There were all types of mentally ill persons — some were convicts or accused persons sent by the Court on account of unsound mind. Others were non-criminal lunatics. Yet others were slightly insane or chronic idiots, ordinarily dismissed as too cretinous to be corrected. There were women young and old, delinquents and innocents, abandoned or left by parents in the curative care of the hospital. Some of them had epileptic fits or other disabilities and many had benumbed understanding, even delusions. Nevertheless, it was heartening to be conducted around and to observe a vibrant work-house of mental patients. Nobody was kept in cell at any time of the day. Indeed, there were cells with iron bars which were put to better use for stacking old records since the doctors did not believe in putting any person behind bars. The most violent case of insanity was easy to be controlled according to modern medicine, said the doctors. I found every inmate busy and working on something useful. The quantum of work was satisfactory, the quality of the work was good. The wages for the work done was paid on a moderate scale. Marketability of the goods was not a problem. Visitors could see the patients who had freedom to move about. The doctors were loved, not feared, by the patients. Psychiatric treatment was appropriately given and there was none who was written off as beyond cure. If NIMHANS could write curative poetry through institutional therapy I see no reason why, in any other madhouse there should be barbarity, despair and drill which even beasts cannot bear. In a mental hospital in a southern city, which was once notorious, I found a healthy change vastly for the better. An asylum in northern city was a haven for girls who were on the road to recovery. Gender justice, in its dimension of mental therapeutics must be a feasible proposition in every similar institution if only the NIMHANS model were adopted throughout the country. Let me assert a proposition which our Report will make good later (vide Appendix XII-B) that the right to habilitation, anti depressant environs and reasonable medical attention are judicially enforceable ‘due process’, now read into Art. 21 (read with Arts. 14 & 19) by the Supreme Court.

A lurid contrast was noticed in one of the southern asylums by me. It was harsh prison and not a humane hospital. It had come under criticism even by a government committee. The pity is that in many of these mental detention centres, the correct orientation is absent; passion for medical retrieval of
patients is not manifest and not even scientific classification and sympathetic staff-patient relations maintained. In an eastern city, the asylum for women I had the misfortune to walk into, was traumatic testimony of criminal neglect by the government department. Many women, with wide range of age and insanity, were caged all the hours of the day. Some were crying, some raving, some singing, all imploring to be set free. No recreation, no occupation, no serious medication. A negative institution preserving a prison tradition with none so poor to do them reverence. It was unconstitutional detention because it was unreasonable, unjust dereliction of duty of compassion and of obligation for habilitation to run a godown of human goods and label it by better names!

In an asylum in a southern city, like in many other such mental camps, female wards are overcrowded with no beds in the wards and patients made to sleep on the floor and sometimes on mats but pillows never. Many women languish for long years in these asylums because there are none to take them back even when they are cured. Sometime the Courts, after remanding them to these asylums finally forget about them, thereby making the 'mental' remandees and the chronic 'burntout cases' the permanent population of the hospital. There is no concern for rehabilitation of these women, nor indeed any occupation or work therapy unit. A report I received from the Superintendent of the Government Mental Hospital in the same city mentions these pathological deficiencies which are shared by other institutions across the country. Many constructive suggestions were made by a Commission appointed by the High Court of the state to look into the conditions of the particular Mental Hospital.

A Division Bench of the Supreme Court (Justice Eradi and Oza) gave interim directions in a mood to humanise a well-known Mental Hospital in eastern India (vide Appendix IV in Volume I). The order makes it clear that the judicial trend, not a radical bench, insists on ameliorative minimum as an obligation of the State. The Court after hearing both sides directed that immediate effect be given by the concerned state to certain amenities which may be treated as applicable to all such curative campuses in the country.

The involvement of the Social Welfare Department, the Social Welfare Board and other social action groups in the field, together with an effective Watch-Dog Committee with
leading persons with concern, may go a long way to remedy some of the obvious flaws in the running of these institutions.

The mental hospital in a southern city is spacious but still believes in cellular confinement and is bereft of creative activity which can restore the person of the women inmates. The premises are kept clean but negative in its regime. Much more can be done although the doctors in charge are sincere and committed. Let me, for emphasis, repeat my mental diary of visits with suggestions to restore sanity to mental hospitals.

Two poignant scenarios deeply wounded my psyche. Both relate to mentally disturbed patients. A large number of women in the jails in one of the eastern states are "non-criminal lunatics". Other states also have this class of people. The illegality of this detention is outrageously patent and the injustice of this maddening measure needs no argument. If your sister shows derangement symptoms will you get rid of her and cast her into cellular custody and hardened dormitories of a raving prison? Or will you despatch her to a gentle hospital where sensitive therapeutics will heal her disease? Why, unlike in private hospitals, should the public sector fail us? I discovered to my dismay, in many mental wards no meaningful medical care is geared to restorative destination. What a pathetic spectacle of lachrymal and screaming girls, forlorn, and elderly women behind bars unkempt, ill-clad and callously neglected, and some standard pills given — and then the curative conscience is silenced, the major remedial regime being the blank walls and iron bars which watch, with deterrent wisdom, shrieks and shouts and soliloquies. Is this the right to life grandiloquently guaranteed by the *suprema lex* or the socialist deal which I thought was the homage to the human essence in each of us.

Punitive warehouses, grumbling women unheeded, cannot be called curative institutions. Can't we evolve new institutes where there are no prisoners, only patients; there are no cells, since prisoners are free within the campus, appreciate the affection shown and respond to the drugs given, work to the best of their ability with pride and even earn moderate wages. Self-expression is self-discovery and recovery therapy is creative activity, aided by shots and pills and what not, with all the miracles medicine now offers. The insanity of institutions is more difficult to cure than the disorders of demented inmates. The finest investment in constitutional compassion is in
transformation of mental health centres. But where is the wish, the will, the wisdom?

I found all the three, long years ago, in a Havana hospital. The medical chief was loved by the unfortunates who clung to him. They played music and danced. They attended classes, they watched televisions, painted pictures, wrote poetry, produced lovely things and proved they were on the road to recovery. In Milwaukee, U.S.A., I found grave mental retardates working in sheltered workshops. The manager told me they could compete in the open market, which mean that these distraught women may earn by work under due supervision.

In a southern mental hospital I found an 'insane' artist. So too in a central Indian mental home. In yet another facility for mental patients, I discovered the pride of patients in producing pretty pieces which they displayed to me with glow in their eyes. Other hospitals are good, bad or indifferent, measured by the vision and passion and inspiration which the top, the staff and the public share. If medical greed, illiteracy and indifference are pervasive, better budgets and foreign degrees cannot help. Hope is not dead so long as humanism is alive. And, by this token, many of our mental hospitals — some deserve to be hospitalised — can be habilitated.

Prison-like confinement is an absurd nostrum for mental cases. Even 'criminal' lunatics—a term of slippery semantics—are only patients. Punitive injury is a therapeutic perversity. But, as I have witnessed mental hospitals can be and often are more frightful and lacerative than jails. So, institutions and operatives must rise to the new needs and laws also must change accordingly. We have miles to go before the mental cases get psychiatric justice.

I suggest practical training and clinical visits to model hospitals by the staff. A catalytic team of mental experts from the well-run hospitals with visitorial powers, with a direction to inspect every such sanctuary in the country, prescribe the norms which are medically feasible and constitutionally necessary is also strongly urged. A sprinkling of jurists and social activists familiar with psychiatrics and human rights will be a good complement. Their directives shall be enforced and disciplinary action taken against delinquent doctors and managers if, on periodical review and surprise visits, there are shortfalls in performance. Women, mentally depressed, have
no voice nor ability to agitate. The law must speak where the victims of state lawlessness are dumb. The only practical remedy is to invest an expert body with authority to inspect and insist that the promises of the Constitution are kept by the institutions. Courses in new advances are professionally a 'must' since obsolescence is a besetting sin of obdurate minds but so also the values of karuna and samata and pragna i.e., compassion, fraternal equation and humane understanding—the quint essence of our constitutional dharma of respect for human rights of patients. Similarly, an awakened generation of lawyers specially learned in the jurisprudence of custodial justice and mental disablement must be trained with functional emphasis on women and children and their peculiar problems. Legal aid is coarse, crude and competent if its know-how is limited to beaten track litigation and counselling. Prison jurisprudence, psychiatric justice and the human right to habilitation are developmental challenges to professors and practitioners of law and justice and, of course, to our judiciary.

The proven truth that mentally disabled women benefit by and are capable of productive work and, indeed, feel the joy of creating things pretty, vividly dawned on me when in one ward of NIMHANS mental hospital girls of 'usound mind' were making handsome garments, and I visibly appreciated a piece shown to me. Seeing me praising the fabric, one of the disabled women working on a cloth sprang to her feet to show me a better one she had knit and beamed with sad-sweet pride when I complimented her. We are mentally retarded if we are unable to see the creative potential of those whom we cage callously and dub as disabled or insane. It is an art to see the soul of others, awaken it by appropriate opportunities of work and play and do justice to their dignity, personality and self-esteem by carving out a congenial milieu of fulfilment. Even the maddest, on correct treatment and loving handling, respond, given sheltered employment, aesthetic expression, vocational training and kindly disposition. If, as in some countries they do, we give wages for work inside mental asylums and prisons and also financial assistance for close relatives to look after deranged females, if only we operate with concern day-care centres and out-patient wards supplying even expensive drugs and facilities, compulsory detentions in lunatic asylums can be reduced. Not to do this as a State Policy convicts those in authority of insensitivity and mental retardation! Mobile mental rehabilitation centres, social employment schemes for the
mentally disabled, sheltered workshops, vocational rehabilitation plans — these are particularly salvationary for women in mental disorder who are rejects of society and family disowned as dishonour or detested as public nuisance. Alas, our coarse soul has been vaccinated against the disease of goodness towards mentally handicapped women whom we hide inside closed rooms or cast into prison as non-criminal lunatics. The world’s deranged plead: "We don’t need pity. We need acceptance. We don’t deserve prison. We deserve understanding." Should legislative action and executive implementation of this suggestion be on long Indian vacation? No. But we must say so in action.

Habilitation: A Mental Patient’s Human Right

A constitutional caveat, before I part company with this topic. The right to habilitation and to reasonably competent medical attention are implicit in the fundamental rights (Arts. 14 and 21) of our Constitution, vis a vis mentally ill or retarded citizens under civil commitments or even criminal remand. A scientific classification of mental patients for accommodation and treatment is also a reasonable imperative.

Mental retardation is constitutionally permissible basis for a classification which affects fundamental rights, but only if the state provides persons in this class with suitable habilitation. It is the provision of such habilitation which would save this classification from challenge under the equal protection clause. Adequate and effective treatment is a constitutional condition for validation of commitment of the mentally ill or retarded because, in absent treatment, the hospital is transformed into a penitentiary where one could be held and indefinitely for no committed offence. The purpose of involuntary hospitalisation is treatment and not mere custodial care or punishment. (Wyatt V. Stickney 325 F Supp. at p 784).

I may add that even voluntary patients, brought in by parents or relatives are entitled to adequate facilities and treatment. The test is not the guardian’s voluntariness but the deprivation of the patient’s personal liberty.

American Courts have rightly abolished the distinction ‘between voluntary and involuntary’ confinement of mental cases. Indeed, in the former, even the judicial protection is absent. The family’s interest may be contrary to the retardate’s
interest. The family may be motivated to ask for such institutionalization for a variety of reasons other than the best interest of the retardate which may well be met by living with his or her family or in another setting in the community, but the family’s may be met by institutionalising him or her. In such a sea of human turmoil, the law cannot presume that the family’s voluntary act is also the retardate’s voluntary act when the former seeks to institutionalize the latter. Often, the retardate must be presumed to be an involuntarily committed individual. This suggests that close scrutiny is needed before confirming an unfortunate, and real curative treatment, even if the family cannot afford the expense, must be delivered to the victim in a non-institutional setting.

The mentally ill citizen is the most discriminated minority in Indian society. And when the victim is a female the family seeks to remove her into an asylum, thus depriving her of the minimum solace of family company. Women in custody and girls consigned to asylums are often written off to save the reputation of the family, in our feudal society. It behoves the Court to do "sanity" justice to the derelicts delictually branded with insanity. Rehabilitation for female retardates in fact must be the basis for sentencing, not the routine penal tariffs of rigorous or simple imprisonment. The law must zealously ensure comfort and cure as compensation for deprivation of freedom.

In the early sixties, the Task Force on Law of President Kennedy’s Panel on Mental Retardation observed:

"Once it has been determined that an offender is mentally retarded to a degree and in a manner making it reasonable to believe his affliction caused the conduct in question, then we think it axiomatic that he should be treated according to his condition. For such persons, imprisonment for the sake of punishment is never appropriate....The mentally retarded offender....requires rehabilitation addressed to the sources of his deviant behaviour."

---

*I am deeply indebted to the authors of The Mentally Retarded Citizen And the Law for the wealth of legal thought in the book from where I have liberally borrowed. The right to habilitation has been expiated upon in Appendix XII-B in Volume II of this report."
Commitment to a mental asylum means the court and the
rest often forget about the person hospitalised. In a Mental
Hospital in a southern city, I came across the case of a
prisoner sent by Court as of unsound mind about 40 years ago.
He had recovered long ago but the court had lost his records. I
drew the Hon. High Court’s attention to this horrendous
confinement and the Judges benignly responded in their
habeas corpus jurisdiction and sent the old man home from
where he came young.

A finale to this discussion is a critique of the Mental
Health Act, recently passed, which is a big stride forward.
The right to psychiatric justice and to the human rights of
the patients are not given proper place and emphasis. For
instance, the right to habilitation is not expressly stated. Every mentally ill or retarded person has the right to
competent treatment when he is confined in a psychiatric
institution. This is part of constitutional jurisprudence
evolved from Arts. 14, 19 and 21. Nevertheless, there is
now no specific provision compelling the psychiatric
hospital or nursing home to give therapeutic benefits to
the inmate, to classify him scientifically, to ensure
periodic examination by well qualified therapists and to
clothe the Court with authority to invigilate and enforce
the right to psychiatric justice and habilitative healing
Considering the deplorable state of many mental asylums
now run by State Governments, such a justiceable right is
a necessity. The Ranchi Hospital case, earlier cited, has
path-finding import.

Free legal services are virtually a right of the patient and an
obligation of the State, when we read Arts. 14, 19 and 21
together with Art. 39 A of the Constitution. Justice through law
has relevance to a mentally ill person only if lawyers qualified in
mental health jurisprudence are sent to institutions. New
courses in the law of mental health are necessary in colleges so
that a generation of lawyers qualified in forensic medicine in its
psychiatric dimension may be available. Only such lawyers will
be capable of rendering legal aid to the mentally ill. Sec.91 of
the present Act does not provide such legal service. On the
other hand, it speaks of the routine litigation under the M.H. Act
relating to reception orders, parole for patients, discharge from
hospital and inquisition proceedings. What adequate medical
treatment is given, what work therapy and congenial living
conditions are provided and what methods of habilitation suitable in particular cases are put into operation, are questions of extreme functional relevance during the patient’s sojourn in the hospital. In Hoskot’s case (AIR 1978 SC 1548), the Court directed the State to give competent and specialised legal service to those in custody - not some sort of legal aid. Otherwise, legal aid becomes a liability. This aspect is a big gap in the M.H. Act. Of course, under Arts. 226 and 32 the higher Courts may exercise their writ jurisdiction in this behalf. But that is expensive, remote, dilatory and as good as non-existence except experimentally. So it is that we stress the need to write into the M.H. Act the rights of patients as part of their kit of human rights.

The existing provision regarding protection of human rights of mentally ill persons, in the diction of Sec. 81, is negative and merely forbids indignity or cruelty and guinea pig experimentation. What is needed is affirmative expression of the right competent treatment as a human right of disabled person which may be read into Art. 21.

There should be a provision which punishes a hospital management and delinquent doctor if a patient is denied appropriate medical treatment. A female patient merely weeps and howls and tears her hair in despair when subjected to neglect and emotional indifference. She is too ill and poor to claim legal relief, too distant to reach her sorrow to her mother and her sisters, abandoned by the family as she is. She is unlettered and afraid to send signal to Courts seeking judicial remedies. If actualisation of psychiatric justice, not formal admission into hospitals, be our purpose, much more has to be done than is contained in Sec. 81 or 91.

The jurisdiction to deprive a person, including a female, of his or her liberty under Secs. 24, 25, 31 or under other scattered provisions of the Act, is vested in a Magistrate of the First Class or Metropolitan Magistrate. Similarly, Sec. 39 deals with the inspection of mentally ill prisoners and reports by psychiatrists to the concerned judicial officer regarding the mental and physical conditions of the internee. Wide powers are given under chapter VI, for judicial inquisition of mentally ill persons. Apart from these provisions, the Criminal Court has the jurisdiction to try the mental capacity of an accused vis a vis the offence alleged to have been committed and the ability to plead and answer the charge. An ordinary judicial officer,
without the assistance of assessors with psychiatric qualification, cannot competently discharge his forensic responsibility in a technical field beyond his normal equipment. Magistrates and other Judicial officers exercising quasi-psychiatric jurisdiction over mentally ailing citizens should be given courses, periodically repeated, in the requisite neotic sciences with functional nexus, before they are invested with powers under the M.H. Act. Moreover, they must be aided by one psychiatric assessor and one social welfare activist. Law cannot go it alone and medical justice cannot be left to legal judges alone. Special Mental Health Tribunals should be set up which will also be obligated to visit all psychiatric hospitals and nursing homes, public and private, and those run under different labels like jails with wards for criminal and non-criminal lunatics, beggar homes which are invariably crowded with retardates or lunatics and so on. This humanitarian jurisdiction, when it goes into action, will prove a boon to the most afflicted human sector kept in custody by State authority.

Two more matters. There is provision for visitors in Sec. 37 of the M.H. Act but they are more or less toothless. They must have more powers, directive and punitive. More authority should be vested in the Board of Visitor to correct, on the spot, neglect of the institution so that prompt relief may be received by the patients. If the Board’s Order is flouted the institution must bear the consequences.

It is unfortunate that the notion that criminal lunatics are more criminal and less lunatic and therefore deserve to be jailed rather than treated, befogs the mind of the law-maker. Sec. 39 provides for the Inspector General of Prisons visiting a mentally ill person in the hospital of the place where he is detained. It should be mandatory that every person who is mentally ill should not be caged inside prisons but must be cured in the hospital premises. The Medical Officer, not the Inspector General of Prisons, should assess the progress of the ailing accused and report to the Court with copy to the Prison Chief concerned. What is most important is the constant monitoring of the treatment and mental status of the victim by a psychiatrist and frequent reporting of the relevant facts to the concerned authority. We mustStatutorily jettison the wrong notion that punishment for guilt even if the actor is lunatic, is right. It is unscientific and therefore untrue.

These suggestions deserve consideration by the Health
Ministry since their motive in enacting the M.H. Act is laudable and the improvements suggested may advance that purpose.

Modern penology and psychiatrics interact in expertise and the development of group therapy may bring more people within the scope of psychotherapy. In England the value of psychotherapy in prison conditions has been found to be such that the improvement in some of the young prisoners after treatment has been quite amazing. Prisons do not provide a suitable setting for psycho-therapeutic treatment. The conditions of existence are too artificial and the purpose of prisons are so different that psychotherapy cannot flourish under those circumstances. Winifred A. Elkin comments about the English prisons:

"It is recognized by all concerned that, if the treatment of mentally abnormal prisoners is to be carried out on a satisfactory scientific basis, what is needed is a special institution, within the prison system, designed and organized for this special purpose. This would serve not only as a centre for observation and treatment, but also as a centre for criminological research as far as the mentally abnormal are concerned.”

[The English Penal System: WINFRED A. ELKIN]

From many angles one is driven to the conclusion that research and development are indispensable for improvement of prisons, especially because many miles have to be covered to establish the nexus between mental abnormality and criminality and the ablest means of dealing with such offenders. There are criminological institutes in our country which may undertake a deeper research into the new prison methods vis a vis psychopathic offenders. These 'criminals' fail to respond ordinary prison treatment. Women being fewer in number, suffer more by neglect and hostility.

It is fair that gender justice enthusiasts include a mandatory demand for psycho-therapeutic treatment for women prisoners even by hiring private doctors if enough number are not available in government service. Alternatively, social service organisations may be persuaded to provide such treatment through competent medics or private mental hospitals of good standing harnessed to the task. Not privatisation of prison, but untilization of public - spirited private resources to the socially necessary goal of saving afflicted sisters.
Beggar Homes

Another species of boneless campuses where women and children in considerable numbers, are warehoused under statutory authority are called beggar homes. Bharat, where around half its humanity is below the poverty line and *garibi hatao* is its battle cry, it is a travesty of fate for social justice to take the shape of punishment with imprisonment for being so poor as to be a destitute vagrant asking alms to keep body and soul together. The female sector, desperate and therefore deranged, falls victim to the curse of starvation and beating at home, flees with the young ones and seeks refuge in the streets of cities to beg the better. To give her dignity economic, social and personal, is to prepare her to earn a living, not to imprison her for the crime of being poor and trying to survive by mendicancy. Socialist India, building a social order vibrant with economic justice has confused, in many states, between *garibi hatao* and *garib hatao* and pushed out of sight the beggar, often a haggard female bag of bones with a child or two hugging or tugging. This woman is, in many instances, mentally broken and deserves compassion as a ‘living creature’ (Art. 51 A), but is it not “a practice derogatory to the dignity of women” to cast them into prison house thinly disguised as beggar home or relief settlement, violative of Art. 51 A? Says the Bible, the tender mercies of the wicked are cruel. And the welfare state, whose upper classes are offended by the guilty presence of beggary in public, bans begging rightly and jails its victims wrongly. When we realise the pathetic truth that many of these women in distress, young and old, are under severe stress and suffer streaks of lunacy or are flotsams and jetsams homeless in the world, the delinquency of the state in culpably custodialising them without curative processes, opportunities of self-expression and wage-paid work, looms large. Such is the social fall-out of the prevention of beggary legislation, conceived in blind kindness, executed in mindless perfunctoriness and proving a value-added wickedness. These institutions, as they now function, are a mockery of compassion and a trickery on the Constitution. Mostly it is the weaker gender, juvenile or gerontic, that asks you when you enter: Am I a person? or a human frame with a forgotten name?

Let me hasten to add that gentle citizens and social activists, philanthropists of goodwill, with oblique consequences, run charitable homes with marginal state aid where
conditions are better, humanism is manifest and educational-cum-vocational objectives are kept in view. And where welfare-oriented and well-run homes for women and children are managed on shoe-string budgets one wonders why the State is not more liberal? Anyway, the relief settlements administered by governments suffer from many diseases despite the space being abundant and the staff well-meaning. The system needs over-hauling and constitutionalising as my visits to beggar homes in various cities brought home to my mind. Gender justice is a sad casualty and a national audit of these institutions and legislations is needed. Perhaps, a new eleemosynary jurisprudence through public interest litigation may awaken the nation to the charitable futilities now statutorily functioning.

Now, a conducted tour of a few states vis a vis beggar homes and related legislations custodialising women.

There are legislations which prohibit beggary in many States like Kerala, Karnataka, Maharashtra, Assam and Delhi. But one's experiences vary when entering each state not merely because of statutory differences but also because the orientation and work culture also differ. A plea for uniformity is obviously strong because the fundamental fairness which justifies detention of beggars and humanises institutions where they are confined is rooted in constitutional values which apply alike to Bangalore and Bombay, Cochin and Calcutta, Delhi and Gauhati. What is writ large in the homes born of these statutes is unconcern for the welfare of these humble humans. Bernard Shaw, in 'Major Barbara' observes: "The greatest of evils and the worst of crimes is poverty". Again, he argues in 'The Devil's Disciple':

"The worst sin towards our fellow creatures is not to hate them, but to be indifferent to them: that's the essence of inhumanity."

Our beggar homes are testimony.

The first beggar home I chanced upon was in a southern city where I was requested by a few women militants to have a feel of the injustices to which common women were subjected after being branded beggar. There is an anti-beggary law under which homes for beggars are set up. Mine was a surprise visit one morning and the scenes I saw were revealing. There were barracks-like buildings in which beggars huddled
together. A substantial number of women rushed towards me with entreaties for help. It would appear that there was a flood of "beggars" on the eve of an important international meeting. One woman wailed that she had come to the city for the eye treatment but was rounded up and cast into the beggar home. Many others, branded as beggars, claimed other reasons for being in the city and entreated me to bail them out of State Custody to enable them to return home. Apparently, the authorities found the Anti-Beggary Law a convenient statutory tool to collect and confine, without much judicial enquiry, inconvenient people whose wandering presence would mar the superficial elegance of the city. There was only Executive Magistrate vested with authority to intern beggars on some summary enquiry. When I telephoned the Executive Magistrate (Tahsildar) how there was a sudden swell of beggars on the eve of the meeting and what detailed enquiries he had made before depriving these citizens of their personal liberty, he readily expressed his willingness to release them. When I enquired of the Chairman of the Central Relief Committee of the Home, a good gentleman, how so many had been picked up by the police in so short a time and deprived of their freedom, he expressed his inability to intervene in the matter as he lacked the necessary powers.

It is not my purpose here to criticise any administrative measure to give a city a face-lift when dignitaries arrive. My criticism is that the statute is so fragile that personal liberty is perishable commodity because an Executive Magistrate, with flimsy satisfaction based upon a short police report, may detail anyone for a few months in the barren barracks meant for beggars. The statutory conception is excellent but its execution incidentally executes Art. 21 of the Constitution, rich with the juicy right to life for every citizen, as rhetorically expounded by judges. Poor women picked up by the police and consigned to the beggar's home can hardly defend their rights because there is no legal aid available, no judicial magistrate intervenes, no ombudsman exists to invigilate the institution and the rule of law goes on long holiday. The High Court is too high and the Supreme Court too exalted for the untouchables and unapproachables of the law lodged in beggar homes. Prohibition of beggary is perhaps a reflection of the civilised concern for human rights and recognises the State's duty effectively to rehabilitate the destitutes. It must have a soul. Does it? The right to life which, in the light of the ruling in the
Pavement Dwellers Case (AIR 1986 SC 1980), includes the right to livelihood, cannot be taken away by the State except under procedure which is just, reasonable and fair. In the Olga Tellis case (AIR 1986 SC 180), the Court emphasised the paramountcy of the right to life and liberty. Therefore, any Anti-Beggary legislation which involves compulsory detention must provide, as a minimum safeguard, a preliminary judicial enquiry and satisfaction that the persons charged and imprisoned are offensive beggars inflicting nuisance and not mere homeless poor deserving shelter and relief from hunger. Even the beggar's liberty can be plucked away only at a price. That price is provision of reasonable clean accommodation, classification of the sick from the healthy, the young from the old, the mentally ill from the normal, the juvenile from the adult or chronic gerontic. Equally meaningful is the habilitative component of detention whereby a beggar may be converted into an earning member of society through honest labour. There must be invigilation of the institution by a magisterial eye so that there may not be degeneration of the inmates, making the remedy aggravate the malady. It is fair procedure to associate social service bodies and social action groups in the running of such institutions. It is a pity that there is unconstitutional handling of the humans custodialised. When we are in the process of creative change and betterment of the economic lot of the common people, we should not stand on official prestige to deny what is an unfortunate fact but cooperate in institutional improvement and make the beggars' lot less dismal. I sympathise with the Government. I appreciate its purpose. I do not accuse the Police. I demand that women's rights, despite their penury, shall be respected. Consequent on my criticism in public the 'Deccan Herald' wrote a short editorial - and I support that note of caution-

"Evidently none of these victims were produced before an executive magistrate within 24 hours of being rounded up as required under the law.

"This is not the first time the Beggars Home has been thus misused to confine persons who can by no stretch of imagination be described as vagrants. Apart from this kind of misuse, to what extent are the Beggar Homes which have been established... being used to rehabilitate beggars?... According to a recent statement, in none of the 10 Beggar Homes in the State had any worthwhile
effort been made to rehabilitate even a small percentage of beggars. If this is true, the goal of eradication of beggary envisaged in the Prohibition of Beggary Act will remain a mirage and Beggar Homes will be used by the police (for reasons best known to themselves) to impound persons who are not beggars."

[Editorial - Deccan Heral, dt. 21.11.1986]

I have been at pains to mention at length the Beggar Home situation in a southern city only because it affects truthful women in many similar cities very adversely. Illustratively, I refer to my visit to a State-run Beggar Home in a western Indian city which is a regrettable contrast to what a social service group was running. The fact is that the staff is helpful but feel helpless in the bureaucratic set-up where slow motion and audit objection are the rule of life. A similar pathology afflicts a southern State where I visited a Relief Settlement. This particular state has three enactments in operation. The indifference of the State to the problem of destitution, vagrancy and beggary is evident from the fact that the legislature has not found the time to enact a unified law codifying and modernising the three pre-independence statutes which survive unconscious of the constitutional rights of the citizens. Another State also has a pre-Constitution Act, some of the provisions of which may suffer eclipse if Art. 13 of the Constitution, voiding incongruous enactments, were to be strictly applied.

Regrettably, in the leading metropolis of this State, I visited a home. It is misnomer to call this campus a Beggar's Home. More appropriately, it is an asylum for mentally retarded, physically handicapped, gerontic decrepits and juvenile delinquents. If the Mental Health Act, 1987 and the Juvenile Justice Act, 1986 were to go into full-blooded action, the city's Beggar Home may have to suffer considerable mutation or constitutional invalidation. Many of the inmates are crammed together in an unclassified heap. There are cretinous children, dotards of unsound mind, valiant vagabonds, beggars, lepers and others suffering from afflictions of varying degrees, physical, mental, and moral. I have nothing to say against the staff which has a responsive heart because the villain of the piece is the system. Food is given, some clothing and shelter in dormitories, and overall confinement in the campus. Medical treatment and psychiatric attention are next to nothing.

33
Recreational facilities may theoretically exist, occupational therapy is as good as absent. The inmates are unhappy and want to leave. The women's section is separate from the men's, which is the only aspect that is right. There are a considerable number of women and girls and little children. Only a revolutionary change can rehabilitate this de facto 'mental' godown into a de jure habilitation centre. Much can be done and needs to be done, if the rights of women are to run green. It is doubtful whether the reception orders themselves are valid. It is not for me to scan the various provisions of the Act, but I must state that the test of a just, fair and reasonable procedure for the lodging of the women and children and their continued custody, is hardly satisfied in the absence of recuperative, recreational, classifactory and therapeautic purposes. Those in charge of the institution are good, the campus is spacious, the need for an institution is obvious. Nevertheless, the huddling together of delinquents and non-delinquents, of diseased and healthy persons, of able-bodied vagabonds and children who can be trained to be good citizens, is an incarceration of doubtful legitimacy. The next to nil legal services for the poor and social visits by sympathetic activists — all these functional flaws make this beggar home a poor model. It can be vastly changed, must be. I hope the state Government, when alerted, will. My description of the institution implicitly contains the social and legal prescriptions for its activisation.

I visited the Relief Settlement Centre run by the Municipal Corporation in a southern city. This too is a godown of the mentally and physically disabled, of spastic juveniles and near-lunatic gerontics. No medical attention, no psychiatrist visits, no recreation of any sort, no literacy courses except for a few children. Some are dumb, some speak a language not known to the staff. A few do work without wages, others stagnate as living vegetables. Strangely, most of the inmates I met on my visit are those picked up by the Police as wandering retardates and cast into the Centre. No judicial order, nor other procedure established by law.

The Vagrancy Act in one of the southern cities authorises setting up of receiving centres and Relief Settlement Homes where vagrants are to be confined on voluntary application with judicial approval or on magisterial direction. Either way they are detained and their personal liberty curtailed. There are penalties provided for the offence of begging and the
Receiving Centre itself is a de facto prison. Art. 21 immediately springs into action and, therefore, rehabilitation becomes obligation. It is unnecessary to investigate the obscurities and ultra vires aspects of this outmoded legislation. But it must be remembered that many a beggar home, including the one in that southern city, is a functional concentration camp and deserves to be liberalised if they are to meet constitutional tests.

Almost all the inmates are either near-lunatics or otherwise mentally unsound in various degrees. Males, boys and grown-ups, are in one section. And in the adjoining hall, are women, young and old. Most of them were a pathetic picture of mental derangement lugged together in a long building; no medical officer has graced into that place, and, therefore, the detention is not for treatment but is a cruel and unusual punishment, as if insanity were an offence or begging a grave crime, deserving indeterminate sentence. No work therapy whatever for women. No literacy courses for women. No hope of release except by escape. A few children, who are girls probably below 10 or 5, are also kept there.

In one of the cities in southern India, I noticed that some juveniles were made over to a Christian institution by a kind of de facto adoption. This institution runs a home where the children are looked after. But the building belongs to the Municipal Corporation, and the food is paid for by the Corporation. I wonder why the Municipal Corporation, whose very power to run the Relief Settlement under the Act is of dubious legality, should farm out the adolescents and abdicate its statutory responsibility while footing the bill for the establishment. This is a clear confession that public bodies are incapable of running public institutions where care and compassion, education and reformation, are the desiderata.

It is a pity that such a phenomenon should be accepted. I take the view that it must be possible to recruit managers and staff with deep commitment to the cause. I am equally convinced that social activists as visitors and advisors are necessary and no red tape should strangle such philanthropic units in the public sector. I had experimented with a State-owned juvenile home in one of the southern cities in the late fifties when I was a small minister in Kerala. When complaints about the institution, which had been made over for management to a nominated Committee were found to be
*prima facie* true, Government chose a dedicated retired Deputy Collector to run the Centre aided by a devoted team. The institution brightened its performance, proving that, given the right cadres, the public sector may work well even in traditionally missionary domains. Given welfare orientation and social justice vision, any helpage home on a secular, socialist foundation can be run in the public sector if the red-tape is kept out and voluntary service organisations and activists participatively dovetailed into the management.

Beggary cannot be abolished except nominally or temporarily by custody of women in homes of squalor. Diabetes is not cured by removal of the carbuncle but only by tackling the pathology in the system. The true recipe is the creation of social conditions where the forces which drive women into crimogenic situations are neutralised.

Social subordination and economic exploitation are a sinister combination keeping women in penurious dependence. Many girls unable to live on their own, many ill-used wives divorced or left derelict and female infants being unwanted tend towards crime and end up as convicts or juvenile delinquents.

In our land of stark rural destitution, penury and beggary simulate similar symptoms and 'thin partition do their bounds divide'. Illiteracy, indigency, physical and mental disability, pious, vagrancy and search for charity, thinly disguised as newspaper vending or like gestures, are pre-beggary pathologies caused largely by the conditions of privation pervasively prevalent. Agricultural failure, severe winter and scorching summer, pressure them into mendicancy because of their fragile have-not status. The worst victims are women and children who are even sold for delinquent uses or crippled to beg the better. Who is the criminal, what is the crime and where is the cure?

If state power, from the legislative tower, punishes the victim for the villainy of the social order, there is social inequity in locking up the forlorn mother and innocent toddler in sight-proof sound-proof human warehouses. Sans legal aid, medical aid, occupational rejuvenation, procedures for self-expression and oxygenation of the institution through dedicated social workers, oversight by committed visitors and invigilation by judicial activists through public interest litigation, prisons may prove failures even for social defence.
Prisons

The prison process, with its current bitterness, is not the way ahead. In a recent study of “Women in the Penal System” by The Baroness Seear and Elaine Player-we find the following edifying findings. The two Researchers say that:

“It is surprising too to find such widespread agreement that all is not well-so few, if any, defenders of the status quo. Governors, prison officers, probation officers, educationalists and ex-offenders all agreed that very many of the women in prison ought not to be there. This is a remarkable finding. Such near unanimity was not to be expected. Many of the men and women who talked to us, disliked what they experienced but felt helpless to alter it. Judges and magistrates claim to send women to prison having tried everything else and at a loss what to do next. Prison governors accept women knowing that prison is not the right place for them, because they have no power to refuse. The probation service, would like an extension, of non-custodial methods, but lacks the resources even to deal as they would wish with present case loads. The prison officers, fully aware of the inappropriateness of prison for many of their charges and of the limitations of their own roles and skills, carry on as best they may with a task which imposes on them almost unbearable strains. The prison education service, which includes gifted and devoted teachers, is frustrated by low attendance rates and by the fact that many women, because of the short sentences they serve, cannot even start courses, let alone complete them.

Finally, there is the enormous expense of running the present system.

“As is not often the case with social issues, many alternatives to prison would require not an increase, but merely a transfer, of resources.”

Elsewhere, they note:

‘Crime is a part of the social order — or disorder — and its causes, consequences and management should-not be swept under the carpet, but exposed to public scrutiny. Failure to do this permits a form of control which is shrouded in secrecy and hampers the mobilisation of the political will to bring about changes.”
These remarks relate to the British Prison System but our system is not too distant. If at all it is worse, acerbated by feudal environs. If we want to save women from entry into crime, more positive perceptions in action are needed.

Deliverance for woman means more than goal delivery. If she is not able to stand on her own feet there will be repeat of the cycle. This merry-go-round must be stopped. It follows that her custodial span becomes useful to her and society only if she is equipped to be self-reliant in the economic sense, without falling into vice as a means of living or disorder as a psychic escape.

Some scrappy attempts are being made in many women's custodial sections to train them up to earn a living through useful crafts. Unfortunately, many of these crafts cannot be reproduced by her when she goes out and therefore she drifts back into the old habit out of necessity. There are several ways of exploring the real gifts of girls in custody. Some of them at least may learn mother-crafts, nursing, baby sitting and domestic service, including good cooking. These skills may give her a livelihood. In fact, when she has acquired sufficient skill she may be sent during day time to earn a living using these new assets. Social welfare agencies, probation officers and welfare officers, even Employment Exchanges may help in this part-time vocational rehabilitation.

Women will not run away and may be easily caught if they escape. Only if their conduct is fairly good and the place to which they are being sent safe and reliable, can this experiment be made. Even tailoring may be taught in the jail and practised outside, to earn a wage provided the prisoner will return well before night fall. Sometime before her release is due she may even be sent to Working Women's Hostels to work or to Open Prisons for agricultural or industrial work or kept in cottage-type jails, where groups may organise themselves to do cooperative work. In many cases, the Khadi and village Industries Board may agree to start units in Women's Wings of prisons and buy the products. These cottage industries may well be continued by the internees after release provided financial aid is given to the women. Likewise, small scale industries may be organised as ancillary units of big industries if selectively installed as peculiarly suitable to women. I remember the Khadi Board approving the practicality of this idea, and in a few prisons charkhas are spinning. I also
remember an electronic firm taking kindly to the idea of small ancillary units being started inside women's wards where they could work with their nimble fingers and supply to the electronic company their handiwork. Even for other small scale industries, given imaginative wardens or prison governors, there is scope. If a loan mela inside the women's wards of prisons were conducted and some entrepreneurial cadres made available, there can be viable projects which may yield an income to the women inmates. They may organise themselves into cooperatives and the members may continue to be so even after release provided there are working women's hostels to give accommodation. With some effort, such schemes may be made viable. That is the impression I got while talking to Jail Superintendents.

I pursued this idea with senior officers of banks. They regard the scheme as feasible. (See Volume II of the Report for a note on the experience of one of the banks with aiding prisoners.) Small scale industrial projects financed by Banks, run under the control of prison authorities and employing convicts and ex-convicts, are realistic. This new avenue must start with pilot projects and all women prisoners will become skilled workers, even shareholders.

The Tamil Nadu Commission and the Mulla Commission have recommended many other vocational training items which deserve implementation. NIMHANS puts female mental patients, and men too, to appropriate work. On the same pattern, other mental hospitals can be graded to goals of occupational therapy. Beggars' homes to have prospects. They have schemes for training and work but cynicism is writ large on the faces of the beggars, the wardens and the official bosses. Every mendicant, given proper stimulus and skill, may be made a good worker earning wages. Here too, small scale industries cooperatives and cottage industries may be organised.

Our rescue homes, vigilance homes, reception centres, juvenile home, Ablala Mandirs, protective homes and after-care hostels may all be converted into meaningful venues of work, wages and virtue. We may kill delinquency through the anti-biotic of willing and wage-paid work.

Unfortunately, short term sentences incredibly self-defeating and yet humiliating, reckless bail at the instance of
pimps or other anti-social elements without the Court caring to get a Welfare Officer's report or Probation Officer's enquiry, make work therapy illusory. So a new policy on these matters, after due discussion with the judiciary and other departments concerned, must be fashioned, the central idea being the restoration of the dignity of women in peril rather than any narrow concept of quick bail resulting in long servitude in private houses of vice and vulgarity.

**Women in Lock-Ups: Who Will Police the Police?**

Women in custody, as a rubric for serious study, covers a large canvas. But the first and most biting crisis begins when her personal liberty is extinguished by Police arrest or by simple detention for alleged interrogation avoiding legal obligations of production before the Magistrate. Khaki power and gender surrender, give rise to molestational misgivings occasionally confirmed by actual instances of police misbehaviour, which lead to considerable shake-up of confidence in the preservation of women's dignity while in custody. From time to time, in the absence of effective pre-emptive and monitoring mechanisms, ignorant excesses by police personnel, especially at lesser levels, have brought obloquy to the administration. Not long ago, in a southern state, indecent assault on the women led to a judicial enquiry. Likewise, in another southern state, police violence on a woman in lock-up convulsed the state as an angry mob was repulsed by allegedly reckless firing and loss of life.

The Mathura case (AIR 1979 SC. 185), which shook police conscience because an adivasi girl was allegedly raped inside the police lock-up and the High Court sentenced the constables on guard, ended in the Supreme Court acquitting the accused based on rules of evidence which, many in the country felt, were too revolting to commonsense. A growing volume of public opinion holds that police procedures, rules of proof and over-judicialised approaches are a high risk for the weaker gender in custodial distress. The law must, but does not, keep its justice promise.

Other cases of baffling violation came to my notice during my visits. In cities in Western and Eastern India, the police lock-ups, physically well maintained, kept many women for several days for offences under ITPA. And male officers unblushingly told me as if it were just and fair, that magistrates remanded
these girls to police custody; for what? Investigation? What investigation except examination of their person? Not murder cases nor those where discovery or identification were needed but plain cases of raids of alleged brothels and arrests of suspects. How come judicial persons forsook their duty to remand these defenceless women and girls to safe judicial detention but quite improperly handed them back to police custody which is the last thing to do? Sensitivity sleeps where the unequal gender weeps.

At least one of the cities (on the western coast) may be the capital city for criminality by and against women. There, girls are herded together after a raid of a dubious house or caught from a notorious street and banded into the police lock-up. The token presence of female warders, surrounded by ubiquitous masculine authority, is the symbolic homage to stree neeti! And as in the city on the western coast, the magistracy frequently remands these girls to police custody. The lock-up, even apart from its frightening surrounding is a bare cement floor, no mat, no bed, no pillow; nothing to keep company but iron bars and high walls and mosquitoes and bugs as nocturnal visitors. All the hours of the day and all the days you are there, together, you sit, stand or sleep with similar sufferers! Oscar Wilde fulfills himself in Indian lock-ups and cells:

"I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who lie in gaol
Is that the wall is strong;
And that each day is like a year,
A year whose days are long".

Remember, undertrials languish even for years in prisons and days in police custody. In law, you are then presumed innocent, in life that is the worst laceration. The whole process is contrary to decency, dignity and humanity. Even the Bombay Children Act of 1948 is but statutory guilt writ large and empowers the police—often the male species—to seize girls in 'moral danger' and the court confines them in police cells or prison bars for the crime of moral danger. Which is the worse—'moral danger' or physical danger? Such a vague and vagarious power to lock up girls on bare floors and walls under masculine control violates Art. 21. The Constitution is but brutum fulmen if law makers and law enforcers become unwitting law-brakers and the judges fail to protect, being too
busy to test the validity of the printed text or defend women's rights with instant effect.

A brief divagation into the law that governs the remand situation is a necessary investigation before making recommendations for reform. The police may ordinarily begin with arrest of accused persons against whom cognizance of an offence is taken or first information laid. Sec. 167 Cr. P.C regulates the procedure when investigation cannot be completed in 24 hours, such as transmission of a copy of the first information and presentation of the accused before the nearest magistrate. Sec. 309 of the Code prescribes how further remands during trial of the accused in custody may be made. While it is not my intent to delve into the details, procedural and otherwise, we must remember the constitutional concern expressed in Arts. 21 and 22 while interpreting the Procedure Code. In a catena of cases, protection of personal liberty has been regarded by the Supreme Court as a paramount value and repeated emphasis, in ruling after ruling, has been laid on the need for the procedure to be fair just and reasonable. Therefore, Sec. 167 Cr. P.C. must be interpreted with high-minded circumspection and rarely, if ever, hand over the person of the remandee to police custody. When the remandee is a woman who, in the Indian context, is in molestational menace, the safeguards written into Sec. 167 must alert the judicial conscience. Only in the rarest of rare cases should a woman be remanded to police custody and, if allowed, it must be for special reasons to be recorded. Indeed, detention in the custody of the police should ordinarily be directed only by the Chief Judicial Magistrate. Moreover, before an order of remand is made the arrestee shall be physically produced before the Magistrate, as mandated by Art. 22 (2). The Magistrate is the judicial guarantor of the safety and justice of the detention. The Code is somewhat suspicious of the police tendency to manhandle detainees. So the magistrate is expected to insist on the physical production of the arrestee by the police. If the arrestee appears in person, the Magistrate is expected to put questions to ascertain whether physical or physic torture has been applied. If the accused is not produced in person, the Remand Order by the Court is invalid. Having regard to Art. 22 of the Constitution of India, the ruling in Nandini Satpathy Case (AIR 1978 SC 1025) and the well established principle that the police must inform the detainee of the grounds of arrest and have no right to refuse to
allow the legal adviser of an accused person remanded in their custody or his relative, to interview him, to supply him with food and clothes, the Court must be jealous of defendant's rights. All these considerations become sensitively and strategically important when we remember that the arrestee is a woman. And yet we find people kept in police custody without being produced before a Magistrate within 24 hours (Cr. P.C 57 and Art. 22 (2) of the Constitution), remands by Courts to police custody without any justifiable reason, persons being held in custody without formal arrest and entry in the police record and extension of remand by Magistrates without physical production of the accused. These are dereliction of duty on the part of the Judicial and Police Officers very much to the detriment of personal liberty guaranteed under Art. 21. Girls being confined in lock-ups for days together without Warrant of the Court is a gross violation, but I found it, alleged in some leading cities in both on the Western and the Eastern Coast. I noticed, while in a police station in South India, persons being taken into custody and kept in the police station for days without formal arrest. Police custody without formal arrest is wrongful confinement in abuse of power. Excuses like detention for 'interrogation' and pending investigation are to be excoriated as flagrant breaches of the Law.

Women police are regarded as a partial amelioration of sex apprehension, because the masculine menace is absent. Many States have, therefore, directed to that as far as possible female constables must accompany the male police during interrogation and arrest of women. Nevertheless, as some reliable reports, including the one submitted to the Court in the Barse case (AIR 1986 SC 1773) establish, even women constables hit prisoner and that, in some cases, the female constables even facilitate brutal handling by the male constables. I myself saw, in a southern beggar home, women guards wielding lathis making me wonder whether there was something violent in the culture of the constabulary, whichever the gender.

My other visits drove home this point forcefully. In one, I found a number of alien girls in tears inside a jail. They had served their sentence but were kept in detention because the police had wanted them as witnesses on a distant hypothesis, namely, that if some absconding accused were re-arrested and brought for trial their testimony may be relevant. When,? No
one knows. Under what authority, is this 'testimonial detention' ordered? No one knows. After all they are women. Who cares?

Another group of victims of grossly unfair detention, again in the same city of the great leaders of the Indian struggle for freedom, scandalized my jural understanding. A few raped girls - not minors - were kept for being cited as witnesses. Having suffered rape the rapees were subjected to imprisonment for future forensic purposes as witnesses. What law warrants innocent witnesses being held in prison in derogation of their right under Art. 21 to personal liberty? Yet another category I encountered in the jails was girls allegedly in 'moral danger' kept for safe custody under order of Courts. I met a couple of these magistrates who admitted they were directing such detention as a usual practice not because there was specific legal authority for depriving their right to personal liberty but because the police reported they were in moral peril and so they were held in protective custody. Perhaps, the magistrates were genuinely concerned, as I gathered. Indeed, if some of these girls were at large, pimps prowling around would find their freedom profitable and sex slavery in the den would be the exchange. Even so, without legal authority and guidelines, how can a Court on police report deprive a person of her freedom of movement or liberty and life? There is some statutory support for incarceration on the score of moral danger but such a blanket power on a vague ground is a menace to personal liberty of young girls, particularly if they are poor. A better law, with safeguards and previous enquiry may have to be enacted. If the law-maker is oblivious, the police-man may abuse and the magistrate may be misled. The court seal is no substitute for legislative zeal.

A methodical approach to the agenda of action in defence of the dignity of womanhood while in State custody is the only scientific project which will make implementational impact on the victim gender. We begin with the vicissitude when a woman passes into the de facto control of the officers of law, particularly the Police, with the might of the State as potential sanction. This is the first freezing touch of Operation Deprivation of Personal Liberty of Woman, and the most biting moment of helpless submission. What are the do's and don'ts which will work in the field to give her confidence against abuse of power? Next comes the stage when a woman, after surrender, is removed to the police station and detained in the
cell there. This transit camp where the sojourn is short is shot with sinister possibilities and is verily the limbo of the law. A member of the weaker sex caught in a cellular recess, is filled with consternation, especially when surrounded by the masculine gender in the forbidding milieu of a police station. The prescriptions of the law, whether in the Constitution or the Code, have short mileage here and thanks to difficulty of enforcement, proved impotent on critical occasions. A pragmatic solution to the problem with an eye on independent monitoring and prophylactic intervention, is the need of the situation. Then comes the judicial chapter. The arrestee, in theory, is ushered into the presence of the magistracy where she is remanded to judicial or police custody. The judge is a great solace at this stage if he is activist and interrogates about torture or misbehaviour while in police confinement. Unfortunately, this ombudsmanic duty of the Magistrate is often not discharged conscientiously and he writes himself off as a functional futility either because he is busy, wary or may have to worry about himself if he is meticulously fussy about police impropriety. It does happen that the magistrate fails to see the arrestee and routinely remands her to police custody again - a reckless dereliction of duty which is a gross injustice to the very office.

How shall we conscientize the Court into doing what it is bound to do with concern for personal liberty and gender dignity? Now, the fourth stage. Assuming that the woman is sent to jail by the judge, what procedures can be devised to ensure that her personal integrity is not violated, her basic dignity guarded and her remand extended, if needed, only after the court has seen the remandee? We move on to the conditions inside sub-jails and central jails. What is the lot of the woman while she is an under-trial in jail or is detained after conviction and what legal aid and social succour can reach her for sure to make her rights real? How shall she, walled off from legal light, get redressal for her grievances through the processes of law and by communication with the free world? Here comes the question of the right to rehabilitation while in prison and on release, - a twilight zone of law where social defence through correction of the offender must go into operation. What institutional arrangements and supervisory schemes will ensure a normal life for the detainee during incarceration and after liberation? Ignorance is enthroned in this department of legal therapy and orthodoxy frowns on the
curative strategy as sentimental software where harsh hardwary alone will work. The police, the lawyer, the judge and the prison manager are on the same wave-length of unwisdom here and sentence to death, in practice, the right to rehabilitation of the convict. Even notions of juvenile justice and gender justice are dismissed as constitutional nuisance or rejected with contempt as mawkish nonsense. Our prisons are pictures of negativity and coarseness because compassion is an outlaw and correction is on the cross. How can we inject new thinking and devise means of implementing the ethics and dynamics of human restoration? Finally we must face fresh problems of aftercare justice and new instrumentalities in that behalf.

Deprivation of personal liberty takes place also in other contingencies and institutions. Juvenile justice legislation curtails the freedoms of adolescents and even infants, but with a benign design. Beggary prohibition legislation is used for imprisoning the poorest of the poor, the mental and material destitutes, child victims bonded to ueg and crippled to beg the better. Mental cretins and physical retardates, even lunatics and lepers, are forced into beggar homes—sometimes ordinary people in tattered clothes and kept in unliveable conditions with none so poor as to shed a tear for their rights, society and state authority dismissing them as a social garbage or human nuisance. Their personhood is entitled to protection, their womanhood must be defended against derogation, their right to be free under safeguards must be sentinelled by the instrumentalities of justice and the inspectorate of civil rights. Where medical treatment or occupational therapy are called for, some sensitive mechanism must provide it. What should they be if effective fire-fighting and visitational therapeutics be their role? Another institution which harbours innocents in incarceratory conditions is the mental asylum. And worse are jejune jails which confine, in perverse misuse, mentally deranged brothers and sisters, criminal and non-criminal. A mentally retarded or deranged female is condemned, without hope of salvation, to indefinite custody, without habilitative remedies and visitors from home. What social surrogates of correction and compassion may usefully oversee these houses of misery, impenetrably sealed off by a medico-legal curtain, apart from the physical barriers?

In the restless pursuit of effective solutions for the spectrum of injustices visited on women in custodial distress
my team and I have discussed the issues with police officers, prison authorities, administrators, medical personnel and a wide variety of socially concerned experts in charge of welfare institutions voluntary and official. In theory, the answers are easy as judicial rhetoric often indicates but, in practice, one is faced by frustrations when one witnesses mechanisms proving dysfunctional. In this pensive mood comes with recurrent frequency the famous stanza of futility in RUBAIYAT:

"Myself when young did eagerly frequent Doctor and Saint, and heard great Argument About it and about; but evermore Came out by the same Door as I went."

**Pharmacopoeia For Lock-up Injustice**

Even so, I must concretise our collective thinking, not as cocksure pharmacopoeia to cure all custodial ills but as an agenda for future action with some prognosis of functional success.

It is common experience that the police take into custody people under various guises without making entries in the General Diary or Case Diary. Only when such a first information is recorded, the law sets in motion the further procedures of transmission of the F.I.R. to the nearest Magistrate and the production, as directed by Art. 22 (2) of the Constitution, of the arrestee before the nearest magistrate within the prescribed time. The duty to inform the detainee the grounds for the arrest springs only if a formal arrest is made, not when the law is stultified by a game of hide and seek.

Two anxious issues face the protective engineer of personal liberty in custodial crisis. When the policeman takes a woman into custody but does not record the fact in the relevant records and hides this defiance by the place that custodialisation has not been effected but the persons has been kept only for interrogation, what is the remedy, preventive or punitive? Some station house officers illiterately candid, admit taking into custody but deny arrest, as if they were dual concepts and deprivation of personal liberty and removal to a police cell is legally possible without the formality of arrest. This nuisance is nonsense because arrest by a police officer is nothing more nor less than taking a person into custody using the authority of law. We have, therefore, to prevent this mischief, but how to force a policeman instantly to record the
arrest and inform the victim of the grounds for such arrest and her right to consult a lawyer of her choice?

Justice Jeevan Reddy, speaking for a division bench of the High Court of Andhra Pradesh, expressed concern over a similar situation. I have discussed the matter with him briefly after delivery of the judgment. We share many common concerns and anxieties, but I will do justice to him quoting his own words:

"Over the last few years this Court has been coming across many a petition for the issuance of writ of Habeas Corpus, with a simple one-line complaint, viz., that a certain person has been arrested by the police on a particular date and that, though a number of days have passed, he has not been produced before the Court, nor released. Invariably this Court admits the writ petition and gives notice to the State. The State requires a minimum time of one week to file a counter; sometimes they ask for more on the ground that they have to obtain information from distant places. In a large majority of cases, the counter-affidavit is again a one-line counter, viz., that the person concerned was not arrested on the date alleged, but on a later date and that he was produced before the Court within twenty-four hours. Quite often such date happens to be a date after the filing of the petition for writ of habeas corpus. On such counter being filed, the writ petition is disposed of saying that no further orders are necessary in view of the statement in the counter-affidavit. In some cases, where the arrest is denied and the petitioner disputes that averment, this Court is directing an enquiry, very often through a subordinate Court - final orders, of course, being passed by this court only.

It cannot be said that the complaints made in all such cases are necessarily false; some of them may be; but at least some of them must be true. As P.N. Bhagwati, J., (as he then was) said in his article "Human Rights in the Criminal Justice System" (published in Indian Bar Review, Vol. III. 1985, page 316, at p. 320) "Cases are not unknown where persons are arrested by the police but no entry of arrest is made in the register, and it is only when the police decides to produce the person arrested before the Magistrate that they make an entry of arrest in the register, thus creating a record showing that they have
complied with the requirement of production within twenty-four hours”. It is not really a question, in how many cases this is happening. Again, it is no argument to say that such irregularities are happening only in a small percentage of arrests made. As observed by an English Judge, when addressed a similar argument, “the percentage may be tiny; but we are concerned with people, not percentages”; (Donaldson, L.J. in Re: SHARMAN AND APPS, 1981-2 ALL E.R. 612). The question that is agitating us is, whether in all such cases, is the writ of habeas corpus the ONLY remedy? Has a man detained in a far off place like Srikakulam, Nellore, or Cuddapah, no other remedy except to move this Court by way of habeas corpus? Because of the distances and expenses involved, many a person illegally detained may not be able to approach this Court. True, in recent times, this Court has been treating letters and telegrams, complaining of illegal arrest, as writs of Habeas Corpus, but even that means quite some delay, because the Government necessarily requires at least one week in such cases to obtain instructions, during all which time the person concerned may be in unlawful custody. Where we take cognizance on the basis of a telegram, and the arrest is denied, the matter has to end there, because the complainant (person sending the telegram) is not before the Court to dispute the respondents’ averment. Sometimes, even his address is not clear from the telegram. As is said by a jurist, “it is the law which ought to be effective, not merely the means of correcting breaches”. Has such a person no immediate, on-the-spot remedy which can give him immediate relief? It is this thought which has led us to investigate this aspect.” [Judgment in Writ Petn. No. 12408/85, High Court of Andhra Pradesh dt. 4. 12-’85. ]

The Constitution and the Code ignite curial processes. A writ petition, theoretically of instant potency, is in reality, a long distance, slow motion proceeding, especially vis a vis India’s agrestics. Magistrates are more accessible. However Jeevan Reddy (J), relevently asks:

“But what is the Magistrate to do when it is brought to his notice that without his ‘authority’, a person arrested is being held in police custody for more than 24 hours? Is he
helpless? Can he not take any steps for enforcing the constitutional guarantee? Is there no way he can enforce his "authority" to prevent the infringement of a fundamental right?

"..... We are of the considered opinion that the Magistrate is not helpless in the matter. Whenever a complaint is received that a person has been arrested within his jurisdiction more than 24 hours earlier but has not been produced before a Magistrate - or a complaint is made that a person is being detained within his jurisdiction beyond 24 hours of his arrest, he can, and should call upon the concerned police officer to state, in the form of an affidavit whether the allegations made by the complainant are true, and if so on what and under whose authority he is being so held? The police officer or other authority, as the case may be, shall have to state whether he has made the arrest, and if so, where is the person arrested now, or whether such person is being detained by him or by his subordinates. The officers must be able to, and must file such an affidavit within a day or two, since the required information is available with themselves, or can be gathered within a few hours. They must also produce the arrested person before the Magistrate forthwith, if not already produced before another Magistrate. The Magistrate shall thereupon either pass orders setting the arrested person at liberty, or pass appropriate order in accordance with law and the fact of the case — as he is indeed bound to do; (MADHU LIMAYE IN re: (1). If the arrest or detention is denied and the complainant disputes the same, Magistrate can also make an enquiry into the disputed question and pass appropriate orders."

"Another aspect: if a police officer or other authority called upon to file a counter-affidavit refuses to file an affidavit, he will be guilty of criminal contempt of Court within the meaning of clause (c) of Section 2 of the Contempt of Courts Act, 1971."

It is significant that the Court holds, and I humbly agree, that detention beyond 24 hours is an offence under Section 342 I.P.C. Says the judge:
"It would follow that when information is placed before a Magistrate that such an offence is, or is being committed, he can order an officer in charge of a police Station to investigate the same. Section 342 is a cognizable offence. Where a complaint is made against an officer in charge of a Police Station himself, the Magistrate must be held to have the power to enquire him about the allegation, and then pass appropriate orders. Similarly Section 190, Cr. P.C [Clause (c) of sub-sec. (1)] empowers a Magistrate to take cognizance of any offence upon information received from any person other than a police officer."

[ibid]

Maybe, Justice Jeevan Reddy's suggested magisterial remedy will help. But the torture would have been over or the news of detention will not travel outside the station. We must search for inhibitive, strategies and 'catch red handed' procedures since the woman inside the lock-up will suffer from lock-jaw.

How to ensure safety within the lock-up? How to guarantee that a woman shall be arrested or searched without molestation or indignity in the process? How to secure the normal decencies and elementary comforts when women are locked up in the detention cell? Several officers have told me that they make it a point to impress upon the lower echelons that they should be compassionate and never be corrupt. Surprise checks of lock-ups are expected but hopes can be dupes. There are circulars and orders insisting that women shall be arrested only when there is a police woman involved in the process. There is a further direction now in vogue in many states that women shall not be kept at night in a lock-up except where there is a woman guard. Surely these checks are some restraints but are not fail-safe. Several cases of criminal assault by the police or within the Station limits occur in spite of these paper provisions and exhortations. So also torturesome inrerrogations, third degree tantrums and custody sans forms of legality.

The supervision by higher officers of the Department does not prevent mischief, and the tendency for cover-up to save the reputation of the establishment is real. Moreover, punitive severity in the event of proven delinquency hardly inspires confidence because punishment must be preceded by proof and proof is aborted by institutional conspiracy and invisibility.
Inevitably, we search for an independent agency or plurality of processes to inhibit deviances and to enable quick detection where violence has been committed. From this angle, the Committee has exchanged views with experienced officers and a broad consensus has emerged which is the least we may consider sufficient. While naked mistrust of every policeman is itself injustice to a whole Service very much under stress, the idea is to provide for contingencies of violation. The very probability of police or any other custodial insolence and violence being discovered in time or detected promptly, being investigated by an independent machinery, followed by a condign action against the guilty, will go a long way to minimise the apprehensions of women victims and lascivious temptations of potential offenders.

Women are exposed to greater danger although lock-up culture is a third degree legacy visited on man and woman in common measure. This need not be, provided a high voltage offensive from within and without, by Women Ministers and police echelons, welfare organisations and social action groups, generates a noisy lobby and the Home Ministry, by a stroke of realism, consents to create a meaningful infrastructure, unconventional but operational, involving the community in its concerned layers in a national project to extirpate this gender-centred vice from police and prison praxis.

**Physical Fitness of Police Lock-ups**

Now to the brass-tacks of the business. Right at the outset I suggest that the physical status of the police lock-up be humanised. Of course, remarkable changes are taking place but most of the lock-ups in the land preserves the old miasma. Women police stations in a few cities, women’s separate lock-ups often in a male milieu are the brief changes. India’s capital city for instance, has a vigorous woman police officer and a few better lock-ups located openly. The new stations show more sense but the feel of the old, and they are the bulk, leaves much to be desired.

Do read a painful page from a *Jails Reforms Committee Report of 1966* (Travancore-Cochin) about police lock-ups:

"Again an under-trial prisoner, is presumed to be innocent, until convicted by a Court of Law, and naturally therefore, he is entitled to get better amenities, than those obtained"
by his convicted brother. The Committee desire to point out, with great regret, that the condition of lock-ups is thoroughly unsatisfactory. Serious overcrowding, insanitary conditions, unsatisfactory condition of latrines, lack of facility for bathing, inadequacy of clothing and bedding, continued confinement in cells for twenty four hours a day, absolute lack of privacy, want of provisions to get free air, darkness of the cells, want of light during night time, indiscriminate clubbing of prisoners suffering from contagious diseases, lunatics and juveniles, want of cell for detaining females, awful odour of urine inside the cells due to absence of provision for draining it out, nauseating smell emanating from the bodies of persons for want of bath for days together, and the absence of amenities of any kind at present enjoyed by their convicted brothers in Central Jails, such as opportunities for letter writing and interviews and reading books, absence of facilities for religious and moral instructions, etc., are some of the defects, that we noticed, when we went round the State, visiting the station lock-ups. In addition to these disabilities, the under-trial prisoner in a station lock-ups, has the further disadvantage of the continued contact of the police with him."

The forward switch is easy if the cop has a sister and remembers her and the police boss has a mirror and remembers his right to a reputation based on his own Karma. Some danda neeti will do immediate good, given stern action against shameless sadists in official tunic. Criminal justice must begin where the lock-up bars close in.

In several lock-ups I saw the internees lying on the bare cement floor. Neither pillow nor mattress, except perhaps during winter. On top of it is the humiliation of a strip tease exercise. I found a young man in a southern police cell stripped bare save for an under-wear and the Police Department, alas, defends this de-humanisation as a measure of precaution against suicide! It is police suicide of its cultural personality. Invariably, this cruelty is inflicted on the poor because the rich can buy any comfort in lock-up and jail — a sad commentary on

our custodial purity. I gathered from one who was recently in a lock-up in a city in western India how he was able to get cigarettes and food by bribing the guard. The story of likely suicide as an alibi for undressing an arrestee at night is rank nonsense, because I found in many States no such practice. If in one State, the lock-up detainee wears his clothes and shows no tendency to suicide how can it be that, some miles away, in a neighbouring State, he manifests the suicide syndrome and must therefore be relieved of his clothes? And see the looney logic when the man is taken to a sub-jail he is allowed to wear his clothes even in the latter State. How can it be that within a day or two of his leaving the police lock-up he forgets the urge to end his life? The truth is that the poor may commit suicide and do not deserve dignity or decency.

Luckily, in the prisons ordinary dress is not outlawed; unlikely, the prison bosses are not cute enough. A first recommendation which, strictly speaking, does not wholly apply to women's lock-ups, is that throughout day and night men and women be permitted to wear their ordinary clothing and eat their ordinary food and sit and sleep on reasonably comfortable mattress with pillow and other facilities to meet nature's needs. Lock-ups are usually ill-ventilated, ill-lit, narrow and fitted with iron bars. Some of the new lock-ups such as in the capital and in a southern city have a more homely feel. This change is welcome and must be insisted upon throughout the country. Otherwise, the peril to women is only a matter of time. Now you strip teen-agers in the lock-up. Next you undress the woman on the pretext that she may hang herself on her saree. If you do not restore the clothes to the man today, Operation Panchali may well be the woman's fate tomorrow. If you do not protest at the first step the subsequent one may be too late. Remember — and police amnesia is unpardonable — lock-up is not a pre-emptive sentence and the presumption of innocence is not under eclipse. Imagine, you or your wife may be there, eventually to be acquitted! Structurally, a police lock-up must be like a room in a house with some privacy and reasonable comfort, not dismal concealment from the public and refusal of privacy all day and night. The open atmosphere and the business-like look of the capital's police house which I visited impressed me. That spirit must spread so that the lock-up may lose its red-brick frown and lack of facilities.
The moral interior of the police lock-up, not merely the physical exterior, deserves sanitization and sensitization. In plain terms, removal of sex temptation must be achieved. This consummation calls for elimination of the male guards from female lock-ups. Today, in many places there is ritual compliance with this gender safeguard. What happens is that the bosses are men but there is the token presence of woman guards, unarmed and decorative. This hardly helps. What is the minimum guarantee of gender security during day and night? To have a separate enclosure free from male infiltration and totally under the control of a woman Sub-Inspector. A separate building for all-women police stations and a mandate that every woman arrestee shall be taken only to the female lock-up in a women’s police station — this is the least to protect the dignity of womanhood in custody. In one of the southern cities, the women’s police station is on the second or third floor and arrested women have to be taken through the male sector. This is obviously unsatisfactory and nocturnal perils at the third floor will never be known outside. Sometimes, as in another southern city, there is a nominal women police section. When I visited the place, the police women pleaded with me to get a separate entrance to their wing and a separate toilet for their use.

In most cases, women police stations are make-believes. For instance, in a southern city, there must be other places too — the female police station is closed down at sunset, because the police women themselves feel unsafe in the darkness. In many states — there are some exceptions — police women are given no arms, not even lathis, no training in self-defence nor in the use of force. The I.P.S. women get training but not the lower ranks. This is an irrational distinction. The women police must be trained in the use of arms and in controlling violence. Indian women cadres, properly attired and armed, are equal to the challenge.

In essence, I plead for separate women’s police stations in separate buildings proximate to men’s police stations. No woman shall be arrested except by or in the presence of a police woman. Every investigation where a woman is an accused should be conducted by a woman investigator. Men in uniform or otherwise should not be allowed into lock-ups of women’s police stations, except when a rescue force is needed. Separate telephones must be made available and a measure of autonomy in reality should be achieved.
This is not a long term project nor an expensive one. Perhaps, we may begin right now with cities and district headquarters towns and gradually move into taluq headquarters. Whenever a woman is arrested, it should be done in the presence of either a police woman or a lady homeguard or any other woman member of a social welfare organisation approved by the District Collector or District Judge. Voluntary agencies approved by the social welfare department at the Centre and in the States are a female resource to be used on such occasions. A systematic approach to involvement of welfare bodies of a voluntary character is a change which will pay dividends.

Assuming that there may be a time lag or some practical difficulty in the universal implementation of this suggestion we may in the meanwhile fall back upon rescue homes and rescue shelters, vigilance homes and even voluntary institutions for transit camp sojourn between arrest and production before a magistrate.

In almost all States, under the auspices of the Social Welfare Department, there are many institutions designated differently but conducive to the same purpose, i.e., to take care of women in moral danger, rescues from brothels and other dubious houses, red-light victims forced into or leading a life of vice and abalas too destitute to be on their own or too bereft of relatives to fall back on a hospitable home. While it must be conceded that these state sanctuaries, as now run, are pictures of pathetic neglect, housed in dilapidated borrowed buildings, denied craft-centred projects and unsatisfactory from a rehabilitatory and self-reliance angle, there is no doubt that these gender shelters have a more congenial and less tense climate than a police lock-up. Therefore, one may make it a rule that wherever there are institutions in the shape of rescue homes, reception centres and the like, run or recognised by the State with sufficient security arrangements, the police must, when they take into custody a girl or grown-up woman, put them up for overnight stay in these nari niketans. Only in the absence of such places or in the case of overcrowding of these centres should an arrestee woman be detained in a police lock-up, whether it be an ordinary station house or a women's wing. It is imperative that a sensitive and scientific classification must be made when these arrestees are brought in so that moral contamination, through the social application of Gresham's
Law, — the worse ousting the better — may be obviated. It must be emphasized that most of the rescue homes and institutions of their ilk are in deplorable condition sans facilities, sympathies and qualified staff and so the State Social Welfare Ministries under the financial and directional leadership of the Centre, must strengthen the accommodation and facilities available in these gender detention stations.

The current judicial yen for sending women under-trials to sub-jails must be stopped and remanding them to what is called gender detention stations should be adopted. The hapless state of women locked up in sub-jails, even in southern cities which are far ahead of many other in the country, makes it an imperative of social justice, that custody, pending trial, of women in the criminal justice process should never be in jails. For instance, in a leading city in a highly literate State, there is a sub-jail right under the nose of the High Court. I visited it one night and was scandalized by the strange scenario for a number of women huddled together in a single cell, with bathroom and latrine inside that cell and with privacy minimal. Iron bars do not hide the female inmates. It is an unseemly situation and gender justice in the matter of accommodation, toilet facilities and privacy is on long leave. The staff is good, although mostly masculine. But what can they do against the infirmities of physical conditions?

Fundamental fairness compels me to make a radical but realistic proposition that women, except in the rarest of rare cases, need not be arrested at all when involved in the criminal justice process, whether at the initial or under-trial stages. The basic assumptions I make are that the woman's person and her dignity are inviolable values, that the woman in our constitutional order, is entitled to special treatment, and that social realism clearly contradicts the likelihood of absconson by women whom the judicial process summons to appear before appropriate authorities. The inference is inevitable that the arrest of a woman is never necessary in the ordinary run of cases, even if the crime be one of murder. Of course, in mafia crimes and dangerous dacoities or gang conspiracies where women, overcoming their gender disabilities, may engage in criminal undertakings, physical detention may be a desirable procedure.

These basic postulates reinforce my proposal that ordinarily no woman be taken into custody, but, on the
contrary, be directed to appear and answer the charge. The exceptions are where her presence is needed for an identification parade as in a dacoity case, or that she is likely to tamper with evidence as a clear and present danger to investigation or any other loudly self-evident instances where her arrest and detention are in her own interest or of society. Secondly, even where arrest is effected, it should never be by men, never between sunset and sunrise and ever on the basis that easy bail would be granted by the police themselves, save where pimps successfully lawyer them into bail for a repetition of the crime, such as is common in prostitution cases, is apt to occur. In some instances, not arrest and detention and the hardening sequel but a return of the lost girl to her parents or ill-treated wife to her husband after due admonition may work more curatively, though less curially. Bail, not jail, homing not arresting, makes social sense in the long run. Many tragic cases where a woman is turned away from her home, with children crying and herself in acute distress, may be avoided by a measure of bail realism and non-arrest wisdom. Indeed, recent circulars issued by the Directors General of Police in some states (vide Appendix VIII in Volume li of our report) go a long way to reinforce the above approach.

In Moti Ram (AIR 1978 SC. 1594), the Supreme Court laid down the law that social justice imprints on the bail provisions of the Code a liberal interpretation in favour of individual freedom and indigent’s rights. Holding that the law must be justly generous where personal liberty is at stake the Court observed:

"30 — Even so, poor men — Indians are, in monetary terms, indigents — young persons, infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances — put whatever reasonable conditions you may."

I have seen in prison after prison, in rescue homes and like detention camps weeping women who could well have been bailed out on their own bond with, a touch of charity and understanding legality. This mandate should apply not merely when arrest is made but also at later stages. Other flexible variants like furlough, daytime release for work with nocturnal incarceration, conditional bail under parental care or welfare organisation’s undertaking to watchdog movements, are well
worth trying even during investigative and other forensic processes.

There is a wrong conception that the police are bound to arrest man or woman who has been concerned in a cognizable offence. The real position is that the police officer may, has the power to, arrest without a warrant, not that he shall or is bound to. That enables him, not obligates him and leaves a discretion to detail or not. Therefore, if a woman is involved in a cognizable offense, the police officer, in his discretion, may decline to arrest and direct her, under a bond, to appear before the appropriate authority.

In view of the above, it is appropriate to suggest that it be made obligatory that no woman shall be arrested or remanded to custody without recording special reasons. If the reasons are flimsy, the Police Officer should be punished and the Judge censured. In any case bail hostels, as in England and elsewhere, may be provided for those who need them. In the absence of such hostels, accommodation with voluntary organisations could no doubt be used to bring down women in custody. Similarly, an extension of special Day Centres which may be run by the Probation Service, as in England, is a possible alternative.

A brief discussion with Women’s Coordinating Council, in an eastern Indian state persuaded me into the hope that this organisation could and would gladly and responsibly take care of women released by the police or magistrates on their own bonds, provided the state recognised and aided it and empowered the management to keep wholesome controls over the wards so transferred. Indeed the frightened women so made over may well change their style of life and learn literacy in health and hygiene and vocational self-reliance. I came across similar institutions in other states equally amenable to undertaking such work.

Speaking generally, it may be wholesome to enable women prisoners to maintain more regular contact with their families through a system of week-end leave. I might add that even when arrested and locked up or later, every custodialized woman may be given the option to go home after executing a bond of her own with a condition that she shall report before a probation officer of a Women’s Police Station.
Let me move on to another aspect of the theme: 'policing the police' vis-a-vis women in the custodial process. The work of the Committee and my own personal observations yield some methodological options to check, double-check and surprise-check. Several seasoned police officers have informally assented to the following procedures.

(a) All senior police officers visiting police stations in their official rounds must, as a working rule, enquire personally into women taken into custody and the promptness with which entries are made and information forwarded, grounds furnished to the accused and compliance with other formalities made. They must ask the confinee keeping the police constabulary away. Even the women police have third degree potential, as I discovered in a beggar home where a staff-wielding lady panicked the beggar women to get back into the barracks. The senior officer so visiting must make a note of his enquiry specifically in his tour diary. It must be made clear, by a rule in that behalf, that all entries in the police station diaries and the tour notes of superior officers relevant to women in custody will be available on application to social activists whose organisations are on the approved list.

(b) Superior officers, whenever they visit police houses should impress upon the lower officials the need to obey the instructions regarding non-arrest of women by police, better accommodation and treatment in lock-ups, liberal bail and strict adherence to compassionate directions while dealing with women under arrest and detention.

(c) Flaws and failures by minions in dispensing gender justice in custody must be visited with deterrent punishment. However, condemnation by the police of the police is an embarrassing in-service exercise. Therefore, one has to rely upon extra-police authorities to invigilate police conduct, especially in sensitive sexual situations. The following few suggestions stem from this approach:

(i) Every First Class Magistrate and above, including the Sessions Judge, must be statutorily authorised to enter at any time any police lock-up subjail and rescue home, care home and the like within his jurisdiction. I would go further and say that these inspections must be surprise checks, sometimes during day, sometimes during night. The judicial officer must be under a duty, periodically, to
go through this exercise and not dismiss it as a ritual. The High Court, I hope, will look into the notes of inspection made by the subordinate judicial personnel so to instil a sense of imperativeness regarding this obligation. If the judge or magistrate discovers something suspicious he must have the authority to enquire fully, record a finding and proceed to prescribe a punishment. An appeal against such finding of culpability and quantum of punishment must lie only to the High Court.

(ii) Inside every lock-up and custodial institution a grievance box must be fitted, and stationery or scribe’s services provided for the inmate to write down her grievance and put it in that box which will be under the lock and key of judicial officers only. The performance of Sessions Judges in relation to grievance boxes was clearly prescribed in *Sunil Batra II* (AIR 1980 SC 1579) and needs to be enforced.

(iii) It must be open to any socially concerned citizen or social action group to invite the attention of a judicial officer about allegations of molestation inside police lock-ups. Thereupon it shall be the statutory duty (we must cast such duty on him) to enquire into such allegations. I would go further and say that for a whole district a few notified judicial officers may be specially empowered in this behalf.

The dual limbs of the Administration — judicial and police — have a certain blood relationship (if I may say so with respect) which breeds mutual affection, even dependence. So much so, even judicial enquiry may not be enough to free the community from the fear of police excesses inside lock-ups, especially of women detainees. We have, therefore, to innovate other agencies for oversight. The following few proposals look pragmatic, though not fool-proof. Long years ago, as Minister for Home in Kerala, I experimented with notifying M.L.As, as ex-officio visitors of jails situated in their constituency. A further extension of this principle may perhaps be useful in diminishing delinquencies from police lock-ups. One has to be careful to see that they do not abuse the trust.

Participative democracy, in the dimension of judicial remedies and visitatorial jurisdiction, has an ideological justification. If “We, the People of India” are the political
sovereign, that philosophy must cast its reflection on the custodial processes of the state. The Committee therefore, suggests involvement of responsible and responsive social action groups of women in the limited field of looking up police lock-ups, as of right and at all hours, not excluding the silence of night when sinister doing may aggravate women inmates' precarious plight. Not officious busy bodies nor ultras bent on mischief, but groups of activists, duly screened, with people's concern and past performance as their credentials. There are many in the field and often, their very presence and operations are an inconvenience to the police wrong-doer. The more effective they are the more allergic the police may be to them. But what we need is fearless groups and individuals who, without oblique motivations, will be on a protective mission. Instead of asking the Collector to approve the list of such organisations and individuals, the District Judge of the district and the Chief Judicial Magistrate, in consultation with the District Magistrate, may approve a list of surrogates of social action groups and individual activists, known for their commitment and capabilities. Supposing approved representatives of such organs are given identity cards and empowerment to inspect police lock-ups, rescue homes and other custodial centres, that may be an effective check on police torture or deviance. These persons must have a right to walk in (with a male aide, if need be), examine relevant entries in the registers and diaries and make their comments in a book maintained for that purpose which may be available for superior police officers and judicial officer. In case these persons are denied visa into the police lock-ups and records or otherwise disabled from doing their duty, it must be open to them to move the nearest magistrate and enforce their visitatorial power. If these persons are allowed entrance into the sub-jails and other incarceratory institutions, including mental asylums, there will be a transformation in the goings-on in these places. The right to record statements from the aggrieved must also accompany the visitatorial power. Sec. 15 of the amended I.T.P.A. speaks of interrogation in the presence of a lady member of a recognised welfare institution or organisation. This seed idea needs to grow.

There is yet another fertile proposal regarding the police enforcement of welfare legislation. A trend is growing within the police thinking that welfare legislation may, as far as
possible, be made over for enforcement to social welfare agencies and that the Police Department be relieved of this responsibility. Oftentimes, when the police take the initiative, brutality is alleged, whether with or without substance. At the same time, enforcement involves force when there is defiance and the Custodian of the State Force is the police establishment. Thus we reach a position where legislation for promotion of women’s welfare may well be entrusted with instrumentalities of social welfare, aided, when needed, by police power. They will initiate action because they have more passion in the cause. But when there is resistance, and often goondas gain access, the police might of the State may be requisitioned by the women’s agencies to overpower obstructors. In short, initiation of action belongs to the social welfare agencies, voluntary and official. The police will, on summons, render assistance. The analogy of a Civil Court decree enforced by the bailiff but with police aid, only if the Court orders removal of resistance by police force, is apt. The Customs Department also offers a parallel. Perhaps, the only exception may be the Immoral Traffic Prevention Act where the initial role must still be left to the social action groups or women but the operation should be carried on always with the aid of the police. The brawly brawny rowdy frequently enters the scene and it is better for women to go prepared to meet eventualities.

The National Police Commission, in its Fourth Report (Ch. XXXII) has expressed its views on this topic. I agree with its main thrust, not with some aspects, having discussed with the erstwhile member Secretary to the Commission. This senior police officer and others have generally assented to the view I have presented.

One of the grey areas where clarity has yet to devolve is the role of the police in the enforcement of social legislation. The Indian Police Commission of 1902 had pointed (75 years ago) to

“the unwisdom of employing constables in duties which tend to make the police unnecessarily unpopular, such as collecting children for vaccination.”

The recent Police Commission commented:

“Our object in making these observations is to underline the point that legislation by itself would not be effective
for bringing about a change in the social value system
and, therefore, the police may not be looked upon as a
primary instrument for effecting a social change”.

There is a growing opinion, shared also by many in our
Committee, that in the matter of social welfare legislation
relating to women, except where violent resistance is very
much on the cards, the primary law enforcement agency must
be the Social Welfare Department and its surrogates in the
official and non-official sectors, the police being called in only
when needed. Even in the matter of Immoral Traffic Prevention,
the National Police Commission do not want the matter to be
left entirely to the unbridled power of the police. They observe:

“We, therefore, feel that some way has to be found by
which the scope for harassment and corruption in the
enforcement of such social legislation is minimised, and
police involvement in the enforcement is effectively
regulated and controlled.”

What way? The Commission is silent.

I think it is fair that the police is controlled by the
mandatory presence of a member of a welfare agency who
herself is a woman. There is a provision in the present Act more
or less to this effect and its backlash is that the police just do
not enforce the law owing to the unavailability of respectable
ladies for nocturnal raids in police company. In a central Indian
city, I found an institution (Nari Niketan) which had a capacity
of 75 persons but only 4 or 5 inmates. Two reasons were given
for the absence of inmates. One was that the Act was not being
implemented since the police found it difficult to get women to
follow them during raids. The second ground given, in the
presence of the Sessions Judge himself, was that bail was
invariably granted and that was the end of the process. Pimps
had their own assembly line operations. Lawyers, sureties,
return to the den, and all that. In fact, I.T.P.A. is a dead letter in
most places and is a symbolic protest rather than an effective
check even in the worst cities.

In a southern city, notorious for sex vice, I.T.P.A. is asleep
because, so I was told by a senior officer, no special police
officer under Sec. 13 had been notified. Nor had any
Trafficking Police Officers (malodorous expression, indeed!) for
inter-State investigations been appointed as per the
Amendment Act (Act 44 of 1986).
Having regard to the slavery of young women in brothels and other like institutions anyone concerned with the welfare of womankind will insist on vigorous enforcement of these legislations with a socially emancipatory mission. That means that a new offensive must be started, in campaign form, where aggressive social action groups of women will be mobilised and the police will accompany them in sufficient strength. This view commands the broad approval of the police officials and social organisations, to the extent I have been able to gather.

Another suggestion made by the Police Commission relates to conditional cognizability.

Remand Reform

Judicial remand is a protective intervention and, in the case of women, a wise exercise of remand power is essential. Remand to police custody must be virtually banned and, if the Court directs it, a copy of the order and the reasons therefore should be forwarded to the High Court routinely so that the soundness of the reason may be scrutinized by someone higher. It is regrettable that for the mere asking the remand power is used even in petty cases in favour of the police. Secondly, despite proviso (b) to Sec. 167(2), the opportunity to the accused of being heard by the Magistrate in person against remand and to represent his/her other grievances is often ignored.


"...the production of the accused before the remanding Magistrate is a condition precedent for an order of detention to any custody being passed by the Magistrate... It follows that the order of remand cannot be made in the absence of the production of the accused before the remanding Magistrate and if such an order is made mechanically contrary to the provision, that order of remand or extension of remand is not legally sustainable, and as such the accused cannot be kept in jail custody even for one minute after the expiry of the period for remand already ordered by the court and the jail authorities cannot keep them inside any longer."
"It is very alarming to note that a huge number of prisoners arrested under S.41 (1) or S.151(1) or arrested in connection with penal offences coming under various enactments, are kept in jail custody under the periodical orders of extension of remand passed by the Magistrates — in many cases even without the production of the prisoners — but also the commencement of the inquiry or trial is delayed or such an inquiry or trial is prolonged and consequent upon the failure of the speedy inquiry or trial, the accused persons are kept in cellular confinements behind the bars for months together, and especially persons who are poor, have no other option except to spend their lives in jail-custody. This kind of situation came for serious comment by the Supreme Court in a number of cases. Yet, this sorry state of affairs has not come to an end."

The following propositions even under the existing law have been stated in the above ruling:

"(1) S. 167(2) of the Code would apply to arrests made under S.41(1) and in exceptional circumstances, to arrests made under S.151(1). But the Judicial Magistrates, while remanding or passing extensions of remands, should be very watchful to see that the liberty of a citizen is not violated by the police arbitrarily and unreasonably.

(2) S.167(2) is not at all applicable to arrests made under S.41(2) of the Code and as such no court can order remand or extension of remand of persons arrested under S.41(2).

(3) The Courts should not mechanically pass orders of remand without verifying the entries in the diaries and satisfying themselves about the real necessity for granting the remand or extension of remand.

(4) Under no circumstances a Magistrate can order the detention of any person in custody or extend such detention without the production of the accused before him in violation of the provisions of the Code, viz., proviso (b) to S.167(2), whatever may be the reason stated by the authorities concerned for the non-production of the accused before the Court, such as the non-availability of police escorts, etc., as shown in the charts, given by the
learned Public Prosecutor in pursuance of the directions of this Court.” [Ibid. Page 140].

Instead of leaving the matter in a state of mere legal reasoning and propositions embedded in rulings of Courts it is better, from an implementational angle, that these are all made part of a police and prison manual. It is further suggested that an adverse entry shall be made in the personal confidential record of the police who asks for remand to police custody of women arrestees and of magistrates who grant it. This joke must end by administrative censure. Similarly, illegal remand of girls into prisons on the ground she is needed as a witness or must be protected, must be punished and tort action against reckless magistrates taken.

A few supporting materials to supplement the views I have propounded. Of course, the ruling in Sheela Barse which I have referred to already is binding law and the Executive can ignore it only at its peril. Two emphatic thrusts stand out as binding mandates issued by the Bench. Incidentally, there is a reference in that case to a lawyer having abused his position of confidence and retained valuables of two German and Thai women prisoners. (What about other lawyerly delinquents?)

The exhortation that follows in the Court’s judgement clearly warns us against glib assumptions about the lawyer’s calling and the care needed to weave a fail-safe mechanism of real legal aid as a means of humane justice. The Indian Bar must, on its own, fight against any member who is a blot on its escutcheon.

As a further safeguard against professional miscreants, a specific provision, with statutory sanction should be made that any grievance a woman prisoner may have against a lawyer in relation to her criminal litigation must be forwarded by the Prison Superintendent to the High Court or the Supreme Court and the latter will request the Bar Council to hold an enquiry and report back the action taken. Not to nip in the bud this burgeoning canker is to abet the vast metastasis of corruption.

Women in Custody and Juridicare Auxiliaries

Free legal services, under Act. 39A read with Art. 21 of the Constitution, are a right and transcend levels of charity. The State Legal Aid Board concerned, through its lesser level branches, must actively take interest in rendering legal aid and,
enforceable duty to provide it to women prisoners must be statutorily laid. The Board's units or other approved legal aid bodies shall depute lawyers to women prisoners — as far as may be, women lawyers shall be sent — and there must be supervision of the Legal Aider’s work. In most States, the Legal Aid Boards are perfect paper performers, and on occasions find their lawyers playing truant.

Moreover, if the legal aid lawyers discover grievances not complimentary to the prison authorities their access to the prisons dries up. Therefore, it is evident that beyond judicial rhetoric there must be specific provisions casting obligations on the police and prison authorities and the Legal Aid Board and its branches. Any judicial officer with criminal jurisdiction must be ready to receive grievances and investigate them if a legal aid lawyer brings it to her/his notice. Where the State Legal Aid Board does not have effective branches or there are voluntary legal aid agencies credible in the eye of the Court, it must be left to the judicial officer concerned to issue authorization to them to send their lawyers to cover women’s prisons. Having regard to the small numbers of women prisoners this will not cost much money nor much labour. Most importantly, the State Legal Aid Board and the Judiciary on the criminal side must be vested with authority to request law schools — Professors and Law Students in the senior classes — to despatch selected students to female prisoners' wards as part of clinical legal education. The grievances so garnered by the students under the leadership of the Professors shall be reviewed by the concerned Judge and appropriate remedial action taken. In fact, all these services mentioned above must be paid for by the State.

The Barse ruling of the Court lends muscle to what has been suggested above. What is good for Maharashtra must be good for Madhya Pradesh and must be meaningful writ for the rest of the country too. Juridicare vis-a-vis women in custody must be express, explicit and mandatory and must be spelt out and funded carefully and comprehensively. The Project must be statutory and must rope in the student resources of law schools and even the N.S.S. under law teachers’ leading strings. As far as possible, girl students alone should be harnessed. As suggested in the report, if credit, by way of marks in the final examinations, were awarded and the clinical visits made compulsory we may mobilise youth power for legal and para-legal service.
We must also garner Woman Power for para-legal succour to wipe gender tears behind bars. A list of recognised women’s organisations kept by the concerned district officers, judicial and administrative will be useful. These women may not know law and so must be guided by a couple of women lawyers, law teachers or other law persons (retired women judges, law professors and so on). A national list of social service organisations with Women’s Wings may be drawn up and its accredited members authorised to run para legal courses in the rights of women, especially in custodial situations. Those who have undergone these courses and received certificates may be permitted to enter, during appointed hours police lock-ups and other confinement centres for women. The purpose is to tell the confinee about her rights, to listen to her tale of grievances and to bring relief if her grievances are remedial.

Women Lawyers Associations, wherever they are available may also be authorised to visit lock-ups and like custodial centres, even on a professional basis to be rewarded by fees. I would go further to say that an obligation may be cast on these various organisations periodically to visit custodial institutions and to take redressal actions. If they fail, the State must cut off aid and recognition. The time has come for re-kindling aware voluntary organisations of women in the processes of social defence and gender protection.

The legal aid lawyer must help the imprisoned women not merely regarding the deprivation of her personal liberty, but also in all other matters affecting her claim to justice and welfare. Indeed probation and welfare officers must be multiplied and given brief courses in relevant law, given access to lock-ups and cells and required to enquire and report about the problem of custodialised women including their right to bail parole, family visits, property matters etc.

Justice Bhagwati’s bench in the Barse Case has also referred to women prisoners in police lock-ups (vide Appendix IV in Volume II of our report). In a sense, this is virgin ground and invaluable as guidelines.

The Weaker Sex—and the Jail Cell

The proximate cousin to the police lock-up is the pre-trial prison, tenanted by accused persons under judicial orders. Teasing and trauma is the lot of women delivered into this
sight-proof, sound-proof world. It generates shock and shame, stream of tears and biting loneliness — all the time behind bars except for animal needs at forced intervals, either do-nothing hours or humiliating chores in listless distress. It is poor comfort that criminal jurisprudence presumes them innocent. The tender mercies of the law backlash, if one sees the consequence. For, the merciful presumption of an under-trial’s innocence disables her from getting parole, work and recreation which are some diversion from solitude and stagnation which make one mad; under-trial status denies them opportunity for rehabilitative programmes, however fragile, and even the minimal cellular creature comforts like pillows and free clothes. Curiously enough and surely irrationally, these elementary needs are denied to those who suffer from pre-conviction presumption of innocence. In a southern city, I asked a high prison official about the rationale behind refusal of pillow to an under-trial alone? He found none and agreed to provide one. Even the other privations are absurd. If a murderer, found guilty, may be allowed furlough or parole, why not allow brief spells at home for one, not yet found guilty, to meet her family and release pent-up tension? In these days of notorious docket delays, what a barbarous price to pay for presumed innocence! Again, why deny her the right (not liability) to work? To sit alone and idle, weeping and waiting for the free morrow that never comes, inflicts psychic horror during every hour. Work is great relief if offered on a voluntary basis and not forced as punishment. Absence of occupation is not rest; a mind vacant is a mind diseased. Until found guilty and sentenced to rigorous imprisonment, law rightly refuses to drive an innocent to slave labour. But if the Establishment gives an option and appetises her with training in skilled labour and wages for work, many will deem it a boon. The poor undertrials languish for long because courts, with no time sense and stunned by the flood for docket, deal even with incarceration cases in a mood of soulless routine. In most cases, enlargement on bail will promote, not prejudice justice. Separate tribunals, a la family courts, may well help develop an expertise of informal justice and professional reflexes which will blend speed with sensitivity. Peripatetic courts with women judges, psychiatric assessors and social worker to assist, novel methods of getting at the truth through affirmative action, flexible sentencing strategies informed by healing remedies, not punitive acid poured to burn, prisons conceived in a
homely, not hostile setting with habilitative techniques, useful crafts and pre-release mainstreaming. — these are not bookish theory for the 21st century but ready radical humanism for tomorrow morning.

Rehabilitative Recipes

The right to rehabilitation, which is one of the major purposes of prison sentences, demands homelier accommodation and restorative regimen. The small size and consequent low priority of the women's system has had an adverse impact. Women are constantly kept under lock and key in wards which produce claustrophobic effect. This comes close to being a severe punishment in itself. If the prison has a high wall, adequately policed from outside, why is it necessary to be perpetually locking the women's sector against possible escape. Indeed, open prison for women is being advocated by thoughtful people on the grounds that the woman who is dangerous is very rare indeed and that the overwhelming majority of women prisoners can safely be trusted in open condition without any risk to public security.

The Tamil Nadu Prison Reform Committee has recommended Working Women's Hostels where training and work may be imparted, and day time social work in community centres is possible. I have found it work well in New Zealand and tried in one instance even in an Indian city. Winifred A. Elkin, in 'The English Penal System', advocates —

“Although a hostel is obviously more suitable than a prison for such training, it has been suggested that the real need is for day centres, at least in the big cities. This would make it possible for a woman to apply the day-to-day lessons as she goes along and enable a probation officer, or social worker attached to the centre, to give advice and help in conjunction with the training. What is even more important, it would prevent the temporary break-up of the home with all the harm to the children that may follow in its wake.”

It looks as if cottage-type women's prisons will promote best both homeliness and personalised attention which is important. The numerical smallness of women sentences makes cottages a viable experiment. Open prisons and hostels and cottage-type confinement centres are congenial for
classification, segregation, training for crafts and community service. Medium security prisons built on the model of Styal in Britain are appropriate options as has been recommended by State and Central prison reform study groups. At least, a year before release, quasi-incarceration in semi-prison conditions and day-care freedom will be a good rehearsal for mainstreaming. After all, a jail should not be a social vacuum nor painful captivity if normalisation is a goal. A home away from home goes a long way towards healing the psyche.

**Justice and Justices: Women in the Criminal Process**

Speaking generally, our judiciary has not that degree of empathy with women in distress. This missing trace element is pronounced in the matter of sentencing and award of special facilities while undertaking sentence. Even an appreciation of diminished criminal responsibility in the matter of women under severe psychic stress is lacking in the regular court. The age-old engine of justice shows no signs of special equity for women, so much so that the illiterate and vulnerable gender, caught in the criminal process, wonders whether the court system itself is a kind of confidence trick. The ethic of correctional treatment is almost alien to the administration of justice and women have no claim to special favour in these halls of law. Rape cases, dowry killings and other offences against women need a different genre of judges friendly with the social and psychological sciences. Even probation reports are ignorantly ignored and bail petitions, at the instance of pimps, for release of brothel slaves are routinely treated without insight into the females' handicaps. The combative system of our courts, the defects of our criminal procedure, the lack of training of our judges, and the failure of our courts as diagnostic agencies are factors that inhibit the delivery of justice. The hurdles are heightened for the women in court. Often, the naive judge is unconcerned with the social setting in which the crime is committed, nor the inner space of the woman's mind which goes haywire under stressful domestic discord. For proper sentencing, for better understanding, for a sensitive in-prison prescription in short, to make the woman culprit normal, self-reliant and free, some measures have to be undertaken: One such is a Treatment Tribunal. Howard Jones in his *Crime in a Changing Society* has this to say on this topic:
"If our penal system is to become an effective agency of treatment, better diagnosis is essential. This means that expert opinion has to be brought to bear upon sentencing policy in the courts. Some American states have accepted the logic of this position, and have taken the sentencing functioning away from the courts and placed it in the hands of a treatment authority of social science specialists. The judiciary are confined to the determination of guilt, and when this is done the offender is transferred to the treatment authority for sentence.

"Even if confined to sentencing, such a treatment authority has many advantages. As developed in the United States, however, it is also responsible for the carrying out of treatment. It usually controls a diagnostic clinic, which provides the advice it needs for making its decisions, but it also controls most of the treatment agencies. It is thus in a unique position for correlating the forms of treatment provided with the needs of the current crime and correctional situation. Our magistrates and judges are often heard to say to an offender: 'If there were such a form of treatment, I would like to sentence you to it', or 'There is no room in a detention centre, so regretfully I must send you to prison', etc. The treatment authority is in a position to provide forms of treatment, as it finds them necessary.

"It can also switch clients from one form of treatment to another, as their progress seems to call for it. A man may be transferred from prison to supervised freedom in the community, as he becomes better able to cope with a freer environment. On the other hand, a man who has already been allowed to test himself out at home, but seems to need supervision for a time, may be called in for a period of institutional treatment. Flexibility of this kind, which our system entirely lacks, may seem antithetical to the idea of justice, but is obviously desirable if we are to adopt a whole-hearted policy of correctional treatment."

[Ibid. Pages 99-100]

A Treatment Tribunal unlike a Court may be less formal in matters procedural; more mobile than the judge on the bench and may therefore move into the prison itself and pass orders after hearing and observing. In the matter of classification, type
of treatment, justification for remission and release and the like, a Treatment Tribunal, with technical advisers and diagnosis, prescription and prognosis, may be functionally more competent. Of course, our present sentencers must be given social science training as is done in Germany and elsewhere and we must build up a closer relationship between the judges and jails and with experts in medical and allied fields. Law cannot go it alone and, in the company of medicine and social sciences may produce better justice.

Rescue the Rescue Home

A high proportion of women who land up in lock-ups and prisons suffer incarceration in vain because of the wrong venue to which they are taken viz., the sub-jail, or the fleeting span during which correctional strategies can hardly be tried on them. When the woman is an undertrial or her sentence is for a short term she is locked up in a sub-jail or district jail. Sometimes overcrowded, altogether without classified company and therefore liable to contamination, always idle and behind bars, these cells are hell. Correctional exercises for them are not on the jail agenda. So much so, these incarceratory institutions, save with rare exceptions, are heartbreak houses or schools for crime. Their life-style and profile must change. Some of our separate women’s jails may be treated as models to be improved upon.

Many prisons are indifferent to women’s illegal suffering. For instance, I saw a woman lifer in a Central Jail in southern India virtually in solitary confinement, contrary to the law laid down in Sunil Batra. Another woman in an eastern prison is a lifer who has served long years with good conduct, and deserves release. Presently, she is the only woman in that prison which amounts to solitary confinement.

Short-term sentences are not kindness but counterproductive. A woman with a short spell in jail is under a shock. She is kept in a sub-jail where conditions are more acid than in the central jail. If the court is awarding imprisonment because it is mandatory it has to be either a token or long enough. Imprisonment till the rising of the court is one alternative where she does not have to enter the iron gates. Or else, a long enough tenure to reach the Central Prison and get rehabilitative exercises. These are issues which need to be
discussed on a tripartisan basis, the judiciary, the prison top brass and the administrative bosses participating.

The plethora of cases which involve women in loss of freedom springs from anti-prostitution legislation and the place of detention is the rescue home. In a sense, they are care centres intended to cure fallen women or salvage those in moral peril. It is a pity that while some are run with dedication others are in deplorable condition. One protective home in a city in northern India elicited from the Supreme Court exhaustive directions (see relevant appendix IV in Volume II for the detailed court order issued in Baxi and others vs. State of U.P.).

Why not treat these orders as applicable to all rescue homes under Arts. 21 and 14, breach of which may be corrected by the Court? I have discussed the subject of judicial activism and Nari Niketan humanism with Justice Bhagwati and both of us feel that the Chinnama directions (as issued in Chinnama Sivadas vs. State of Delhi Administration and reviewed in Appendix IV in Volume II of our report) may be treated as pan-Indian paradigms.

Now in most Homes of Healing, if I may call them so — 'They are more honoured in the breach than the observance'. Neglect, thy name is Rescue Home. The key question here which I address myself to is the disturbing one: Who will rescue the rescue home from its moral desuetude?

In my Father's house are many mansions. Women are small in number and prison, as an institution, is not the only place for social defence. Indeed, reduction of the female population and elimination from captivity into wholesome homes is the goal. From this reformist angle, a versatile wealth of novel correctional processes must spring into existence if custodialisation of the weaker sex is to vanish progressively without danger to society. Juveniles and women require special treatment. In this context, the judges must be educated into the new methodology of alternatives to sentences in prison. Probation homes and hostels are welcome. They provide an atmosphere of homeliness and promote new habits. Despite the Central Government's financial encouragement of socially useful hostels we have not had enough number of them. I think women's associations with excellent credentials may be persuaded to set up model hostels. Some already do.
A system of involvement of the representatives of society in the management of custodial institutions is desirable. The standard pattern is the visitatorial role. The Sankara Narayana lyer Committee (1955), whose recommendations for Trivandrum-Cochin were far-sighted, recommended boards of visitors for all incarceratory centres involving Sessions Judges, District Magistrates, Medical Officers, Municipal Chairmen, M.L.As., Members of the Bar and Ladies from the local Community. More than three decades have passed since, and we have more reports to rely on. The participation of local authorities, judicial personnel, law persons and a substantial number of women to watch-dog all confinement centres and their operations, may be a big move forward in securing gender justice as a living practice.

In Giasuqain, speaking for the Court, I summed up:

"...The perspective having changed, the legal strategies and judicial resources, in their variety, also have to change. Rule of thumb sentences of rigorous imprisonment or other are too insensitive to the highly delicate and subtle operation expected of a sentencing judge. Release on probation, conditional sentences, visits to healing centres, are all on the cards. We do not wish to be exhaustive. Indeed, we cannot be.

[AIR 1977 SC 1926]

"In this connection we may even refer to proven advantages of kindling creative intelligence and normalizing inner imbalance, reportedly accomplished by Transcendental Meditation (TM), propagated by Maharsi Mahesh Yogi in many countries in the West. Research projects conducted in various countries bring out that people practising such or like courses change their social behaviour and reduce their crime-proneness. We do not prescribe anything definite but indicate what the prison doctors may hopefully consider."

[Ibid].

In Hiralal Mallick, the Bench considered the question of sentence and there quoted from a lecture by Chief Justice Sikri on Probation:

"...But is it enough to pass a law and say the probation is a good thing? Not only should the serious student and
Probation Officers be convinced of its advantages but the Judiciary and the Bar must also become its votaries. Unfortunately at present very little serious attention is paid to this aspect by the Judiciary and the Bar. As a matter of fact I was shocked to see that in a number of cases, which came to the Supreme Court recently, even the existence of the local Probation of Offenders Act was not known, or easily ascertainable. No reference to the relevant Probation Act was made in the court below but the point was for the first time taken in the grounds for special leave to appeal to the Supreme Court.

"...It seems to me that if an accused person is likely to be covered by the Act, and his age appears to be about 21, efforts should be made by the investigating agency or the prosecuting counsel to collect material regarding the age. You are all aware that the exact age is known to very few persons in rural areas.

"I also think that a Magistrate should himself try this question early, if there is any possibility of the applicability of the Probation of Offenders Act."  
[AIR 1977 SC 2236 p. 50]

Alas even today the Executive and the judiciary try only lip service to Probation Office. There is great potential here, especially for women and children.

Use of Parole

The Mallick (AIR 1977 SC 2236) Court was of the view that periodic parole was a desirable measure. Parole as a de-stressing strategy was upheld in a recent ruling of the Delhi High Court, delivered by Aggarwal, J. for a division bench.

'Before we part with this case, we would like to say that there are a large number of convicts in the jail who have never been released on parole. We are receiving petitions almost every day from life convicts for parole in which they allege discrimination. We would recommend to the Delhi Administration to frame rules or guidelines for the release on parole of life convicts or convicts undergoing long terms of imprisonment. We feel that life convicts who have undergone imprisonment of more than 4 or 5 years and have maintained good conduct should be given vacation (from jail) for a period of one month every year.
This would have a great biological and psychological effect on the mind and behaviour of a life convict and it may help in reducing the offences committed in the jail. This would also help a convict during that brief holiday to have a normal family life and maintain 'unity' of the family."

[Criminal Writ No.115 of 1987 High Court of Delhi, decided on 9.3.1987]

Transcendental meditation, the parole helps the healing process. A research project in a southern city under a senior Professor of Criminology substantially affirmed the value of TM as a rehabilitatory tool. The Tamil Nadu Government introduced TM in prisons and it was astonishing to see women prisoners and juvenile delinquents rise refreshed after 20 minutes of deep experience twice daily. I have seen U.S. jails and New Zealand jails adopting this prescription for reformation. In Rajasthan, the Vipasana form of meditation was practised by some prisoners. I must admit my studies and association with the Movement for Transcendental Meditation have persuaded me about its benefits. My point here is not to sell one or other form of meditation. I merely request the Central and State Governments not to put their punitive eggs in the prison basket alone but move on "to fresh woods and pastures new".

Prisoner Participation

Participation in regulatory processes is activisation of finer responses and responsibilities. Prisoners' participation through Panchayats must be extended to women who are now ignored. Committees for messes, recreational and vocational activities, meditation and singing, literacy classes and other forms of self expression as well as for collective presentation of grievances may well be organised by the authorities with the involvement of women prisoners. Democracy behind bars is a training with its own rewards.

The Nehru Philosophy of Prison Reformation

The Promethean spurt of protest against prison praxis is best expressed by Nehru in his admonition of more than half a century back about "the absolute necessity of having a competent humane staff fully understanding and appreciating
the new angle of vision and eager to work it.” It has an unfulfilled freshness even today. His other observation also is worth recall:

“I wish some of our people would study and, where possible personally inspect, prison conditions in foreign countries. They will find how our prisons lag far behind them.”

It may be relevant to recount what I had observed in jails abroad and the impact it has made on me. In Wellingdon (New Zealand) I saw a prisoner producing marvels of artistic pieces in wood which the authorities told me would fetch several thousand pounds, if sold. He admitted, before me, he was an agriculturist sentenced for committing rape. Given the opportunity and the materials and encouraging environs he used his time to learn wood-craft and now is a master craftsman transformed from rapist to artist with noble instincts. The prisoner is the owner of what he makes inside the Wellingdon prison and the price fetched belongs to him — an incentive to become an earning member of society rather than continue as a sullen soul forced to wageless toil and waiting to avenge upon society. The prisoners were free to do transcendental meditation through a specialist hired by the department. In Japan, I found the prisoners working hard and earning wages contributing creatively to the wealth of the nation. In Stockholm, the atmosphere in the prisons was far freer than elsewhere. Even in 1958, when my wife and I visited the prison there, the inmates enjoyed modern amenities inside the cells and were allowed to stay with their families on weekends. Of course, I have also seen grim prisons of iron rigidity in Germany of the fifties but the Soviet Penal System is a sober model. They have arts clubs which even performed outside prisons. They do useful work for which wages are paid; their dress is not the convict’s costume which brands him as criminal and no stigma is attached to the prisoners after their release. Rehabilitation is writ large in the processes of the prison. As long back as 1934 Jawaharlal Nehru wrote thus:

“Russia, that terrible land of the Soviets, has perhaps gone farthest ahead in the improvement of prison conditions. Recently a competent observer inspected the Soviet prisons and his report is interesting. This observer was an eminent English lawyer, D.N. Pritt, K.C., who is
also the Chairman of the Howard League for Penal Reform — an organization which has been the pioneer of prison reform in England for more than sixty years. Pritt tells us that the punitive character of punishment has been entirely removed and it is considered purely reformatory now. The treatment of prisoners is humane and remarkably good."

[Report of the All India Committee on Jail Reforms 1980-83 Vol. II — Page 412]

Soviet prisons combine work, creative expression, serious purpose and goal-oriented programmes.

In the United States I have seen transcendental meditation being practised as in the Wellington prison, similar to what was practised in Tamil Nadu prisons. Folsom prison, for instance, imparts meditational techniques to kindle creative intelligence although maximum security prisons are awesome and blood-shot. Arts and Crafts Programmes play a role in bringing out the inner man and enhance his sense of worth and accomplishment. All these add up to one conclusion that reformation, not retribution, must be the guideline.

I have been asked by stern captains of prisons, after I introduced refreshing reforms in Kerala Jails in 1957 when I was Minister for Prisons, whether people would love to be in comfortable Jails as against being in cruel conditions outside. The answer given more than 50 years ago by Pandit Nehru is fresh even today and is an education in Prison Policy. I quote him as my authority:

"Another error which people indulge in is the fear that if gaol conditions are improved people will flock in! This shows a singular ignorance of human nature. No one wants to go to prison however good the prison might be. To be deprived of liberty and family life and friends and home surroundings is a terrible thing. It is well known that the Indian peasant will prefer to stick to his ancestral soil and starve rather than go elsewhere to better his condition. To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible. There should be hard work, but not the barbarous and wasteful labour of the oil pumps or water pumps or mills. The prison should produce goods either in large scale modern factories
where prisoners work, or in cottage industries. All work should be useful from the point of view of the prison as well as the future of the prisoner, and the work should be paid for at market rates, minus the cost of maintenance of the prisoner. After a hard eight hour day's work the prisoners should be encouraged to cooperate together in various activities — games, sports, reading, recitals, lectures. They should above all be encouraged to laugh and develop human contacts with the prison staff and other prisoners. Every prisoner's education must be attended to, not only in just the three R's, but something more wherever possible. The mind of the prisoner should be cultivated and the prison library, to which there must be free access, should have plenty of good books. Reading and writing should be encouraged in every way and that means that every prisoner should be allowed to have writing materials and books. Nothing is more harmful to the prisoner than to spend twelve to fourteen hours at a stretch every evening locked up in the cell or barrack with absolutely nothing to do. A Sunday or holiday means for him a much longer period of locking up.

"Selected newspapers are essential to keep the prisoner in touch with the world, and interviews and letters should be made as frequent and informal as possible. Personally, I think that weekly interviews and letters should be permitted. The prisoner should be made to feel as far as possible that he or she is a human being and brutal and degrading punishments must be avoided."

[Ibid. Vol. II Page XX & XXI].

And yet there are even now weeping women in prisons — I saw one in a jail on the western coast recently — languishing for over twenty years, including earned remissions, whom the State Government keeps as human pulp and soullessly declines to liberate. The other jails also house such miseries. A worse syndrome is the whimsicality of remissions and the harsh stipulation of 14 full years behind bars imposed by Sec. 3404 of the Cr.P.C. The poor suffer while the rich manipulate to extricate themselves. The abuses that abound in our lock-ups and jail cells need a separate volume to cover. Women are voiceless or misused even if men protest at times.
The conscience of the Constitution, it must be fairly conceded, has affected the Administration by fits and starts. Several States have appointed Committees and Commissions to review and revise the policies the State should pursue inside prisons and police cells. We have many valuable reports on jails even from British days.

The Kerala jails reflected the winds of change when in 1957 the State Government introduced habilitative measures conducive to the dignity of the person in the prison. Wages, though nominal, were paid. Decent dress, not convict's costume, was introduced. Prison Annual Days were celebrated with prisoners having opportunity to express their artistic talents. One lifer, who was otherwise a musician, was even allowed to sing on occasions on the All India Radio and the remuneration received was remitted to his wife. Feasts were organised where inmates of all communities joined in festival mood. Prisoners were taken to the city exhibitions. Many sub-jails were improved in structure and one of them was newly designed to give a different homely atmosphere. Toilet facilities were vastly improved and canteens were run in every central jail where tea was served, cigarettes and bidis sold and other items were permitted. Handcuffs, when prisoners were taken to court and back, were virtually abolished.

One of the habilitative measures introduced was the liberalisation of parole without harsh pre-conditions and based on the realities of family life. It provided to be a blessing both for the parolee and for the process of re-humanisation. Forgive, dear reader, this quasi-personal narration of changes in Kerala's prisons. Dotage and anecdotage go together with a mild égoist dosage.

In a city on the eastern coast, I rejoiced to notice, when I visited a prison recently, that there were prison Panchayats with responsibilities and powers, and sports activities were also organised. Democracy works well out there. In another southern state, I found many women prisoners making pretty handicrafts. In fact, the greetings cards they made really greeted the new change. In short, the perspective of Prison Justice is striking root.

**Destination Crime-Free Woman**

A weighty *preemptive* factor which has no direct relevance