of most chapters, it is not considered necessary to recapitulate them in their entirety in a separate section. It is the committee's earnest hope that when received and read, there will be enough strength of purpose in the policy maker and the administrator to start the purpose of implementation.
PART II
PART II
RECOMMENDATIONS ARISING: AN AGENDA FOR REFORM

Toward A Concerted Approach

458. A system's efficiency depends on its cohesiveness and on the success with which the sub-systems can relate to and mesh with the body politic. The process of meshing is itself reliant upon clearly stated corporate objectives. In custodial correctional administration unfortunately such clearly stated objectives are hard to come by. The entire field of criminal justice in fact suffers from the lack of a clearly defined concerted statement on the concerted principal objectives of crime prevention, custodialization, correctional treatment, and rehabilitation.

459. As the preceding discussion has demonstrated, the existing malpractices and the delinquencies in the various forms of custody tend to effect women more adversely than men. This is on account of the fact that the women are still a marginal group in the custodial population and tend to be less vocal, demanding and violent in demonstrating against custodial or other injustice. With this in mind, specific and specialized interventions are necessary to restore the existing imbalance in the criminal correctional justice system vis-a-vis women. The recommendations that follow represent the essence of the Committee's perceptions regarding a reform approach to dispensing custodial justice to women and to protecting her dignity and her person in custody. The proposed interventions are addressed to the policy making, reviewing, enforcement, and organizational and infrastructural levels.

I. POLICY MAKING AND MONITORING

Policy Guidelines

460. A set of concrete guidelines evolved to meet the special needs and disabilities of women in the criminal correctional process, will enable the functionaries of the system (police, prosecution, courts, prison and correctional personnel) to reorganize their approaches and procedures in a functionally meaningful manner to serve gender justice.
Policy guidelines should be developed, among others, on the arrest, interrogations, search and detention of women, bail and sentencing, pre-sentence investigation, use of socio-legal counselling, psychiatric services and scientific classification in the pre-trial and conviction process, presence of legal aid cells for women in every police district, diversion of women offenders to separate and specialized trial processes and to non-institutional correctional options, association of volunteers and voluntary agencies working in the field of women's development in the investigation and trial of offences and watching over custodial conditions, etc.

National Policy on Custodial Justice to Women

Keeping the above in mind, the present Committee wishes to recommend the formulation and adoption of National Policy on Custodial Justice to Women. A draft policy statement is enclosed in Part II of the present report. The Committee has tried to incorporate in the draft the key elements that have emerged from the body of its deliberations as reported in Part I. It is urged that the draft be debated widely by the various components of the criminal justice system as well as women's groups, legal aid, social welfare, mental health and other interested groups. It should then be endorsed and adopted for enforcement nationally.

National Authority on Custodial Justice to Women

No policy is effective unless it has an enforcing mechanism. In order to assist the process of national concerted action, and to specifically overview the implementation of the proposed policy, the Committee recommends the creation of a statutory autonomous body to be designated as the National Authority on Custodial Justice to Women (NACJW).

Composition on NACJW

NACJW should have the representation of every component of the criminal justice system namely the judiciary, law, legal aid, police, prisons, probation and aftercare, and social welfare and mental health custodial institutions. It should also include representatives of medicine, psychiatry, law schools, schools of social work, women's groups, human rights and civil rights groups, the media, professional research
and training bodies in criminology and social defence, etc. This statutory body will enable various governmental ministries and departments and institutions like NISD, BPRD, NCRB, National Police Academy, Institute for Criminology and Forensic Science and other to get together on a routine basis with various operators of the criminal justice process, and with key non-governmental individuals and groups dealing with custodial conditions and the status of those in custody.

465. NACJW should be presided over by a distinguished personality, who should be selected solely on merit and commitment. Other than small nucleus of paid secretarial staff, the NACJW should consist of only honorary members.

Terms of Reference

466. The purpose of this body should be to monitor custodial conditions, to serve a vigilance cell, to spot and highlight unjust procedure and to assist inremedying them and generally to serve as brains trust in promoting preventive and habilitative action for women offenders as well as non-offenders.

466.1 A key function of this national body will be to assist in evolving and maintaining high standard of professional competence. For this purpose, NACJW, will have the assistance of an association composed of practitioners, academicians and individuals with relevant experience authorized to enforce professional standards through the instrumentality of accreditation.

Monitoring

467. The apex body (NACJW), as one of its main functions, will be responsible for the compilation of an annual state of the art report to be presented yearly to the Parliament and disseminated widely. The annual report will be in the nature of a critical assessment of the quantitative and qualitative parameters of the status of women and girls in custody. It will also evaluate progress in achieving the goals enshrined in the National Policy on Custodial Justice to Women and in enforcing existing legislation rules, manuals, etc. The Annual Report will contain chapters on:

1. Administration of Justice including disposal of cases
concerning women and girls, pendency, nature of sentencing and related matters.

2. Enforcement of legislation relating to women and girls and an assessment of its relevance and efficacy.

3. State of prisons and police lock-ups, crime, arrest and prisoner data, including data on probation and aftercare.

4. State of social welfare custodial institutions and extramural programmes for women and girls.

5. State of mental health custodial institutions and extramural programmes for detection, treatment and rehabilitation of mentally affected.

6. Performance review in respect of legal aid by non-governmental institutions and individuals.

In addition, to the aforesaid chapters, the views of prisoners and custodial inmates as well as of voluntary agencies and individuals on custodial excess or lack of success of enforcement of the National Policy could also be included in the manual report.

467.1 The above is an indicative list and the actual contents, format and modalities for gathering information should be devised by the NACJW after it is created. For this purpose, necessary enabling power may be provided in the statute incorporating NACJW.

467.2 For facilitating the compilation of the annual reports, NCAJW should be empowered, under the statute incorporating it, to co-opt the officers of the Central Ministries such as Law and Justice, Home Affairs, Human Resources Development, Welfare, etc., for the purpose of gathering the necessary data and for coordination between different Ministries. The officers co-opted on the NACJW will be responsible for making available to the NCAJW the relevant information from the required data sources of the concerned Ministries so as to enable NCAJW to compile the Annual Report in time. The Annual Reports prepared by NACJW will be submitted to the Ministry of Human Resources Development which in turn will cause the Reports to be laid before both houses of Parliament.

**Ombudsman for Custodial Institutions for Women**

468. The Committee further proposes that one member be
designated from the NACJW as the Ombudsman for Custodial Institutions for Women in India. This can be done on a rotating basis for a fixed items which can allow for continuity without sacrificing efficiency. The ombudsman’s specific role will be to focus on delinquent custodial practices and procedures and to enforce remedial action. As far as possible, this function could be reserved for a woman member of the NCAJW.

**Counterparts at State Level**

469. It is recommended that there should be counterparts of the National Authority on Custodial Justice to women and of the ombudsman for custodial Institutions in the States. The State level set will have functions similar to the Central Authority. It will also present an annual report on the status of women in custody to the state legislature and disseminate it widely. The States report will be routinely made available to the Central Authority and furnish a basis for the compilation of the annual review by the latter.

**II ENFORCEMENT**

470. The preceding represents policy making and monitoring mechanisms. At the operational level, certain specialized structure are envisaged which embrace various components of the criminal justice system as follows.

**A. JUDICIAL**

**Family Court versus Separate Courts for Women**

471. Keeping in view the pendency of cases and noting that this tends to affect women more adversely than men, the present Committee feels that specialized courts must be set up to dispense justice separately and speedily to women.

472. In specifying a modality, the Committee is faced with some difficulty. Under the existing Family Court Act, 1984, a mechanism is already available to dispense justice to women. Moreover, the Act has an inbuilt provision for expanding the jurisdiction of the Family Court vide Section 7. (2) (b). With appropriate additional provisions regulating the presence of lawyers and witnesses etc., the Family Court's jurisdiction can be enlarged to include all cases pertaining to offender and non-offender women. There is also a strategic advantage in
proposing an existing mechanism as anchor and building around it, rather than risking the undue delay and uncertainty associated with creating a mechanism which is altogether new.

473. The hesitation in unilaterally proposing the Family Court is on three accounts. One, the progress under the Act has been very slow. Since it was enacted in 1984, only 3 such courts are operating in the country. As a modality the Family Court is thus still new and untested and the Committee is justifiably wary to recommend a central role for it in dispensing comprehensive justice to women. Another objection is on substantive grounds. The Family Court is an informal, conciliatory mechanism whose attraction and strength, is its non-litigative approach. The Committee’s apprehension is that in arming it with criminal jurisdiction, the entire approach to adjudication may have to change. A third constraint arises from cases where a joint trial of women with men may be involved and the procedural difficulty of separating the two co-accused.

474. As an alternative, the Committee has considered the modality of creating special courts for women or Mahila Nyayalayas which also have their merit and demerits. These exclusive courts can serve the purpose of rendering criminal justice to the women better than the normal courts do, and certainly with greater speed and sensitivity. Moreover, since the women’s court represent an entirely new structure, it can be moulded to the specific approaches appropriate to women. On the other hand, because it is a new institution, it is more likely to suffer from lack of acceptance and tardy enforcement.

475. Faced with these pros and cons, the Committee has taken a neutral stance and recommends that depending on the individual preference of States, either the Family Court with its amended jurisdiction, or the Women’s Court should be instituted to dispense justice to women. Syphoning off women to either of these two institutions from the regular system will bring down its case load to some extent but that will only be a marginal gain. The main gain will be by way of quicker, more sensitive and less callous processual justice rendered to women.

476. It is interesting that at the time of writing, a concrete proposal for setting up a women’s court has in fact been announced in a Southern State. Known as the Mahila Court,
this institution will deal exclusively with offences against women. It is being set up as an experimental measure. A copy of the State Government’s notification is appended.

**Separate and Specialized Modalities for Dispensing Justice to Women**

477. The thrust of the present recommendation thus is to make it mandatory for the States to create a *separate and specialized justice dispersing modality* but to leave the actual choice of the modality to the individual preference of each State. As an annotation, it may be emphasized that whatever the modality, when dispensing justice, the court(s) in question should rely heavily on the services of the social welfare agencies and professionals from other relevant disciplines in order to achieve enlightened and informed processing and sentencing.

**Nari Bandigriha Adalats (Women Prison Courts)**

478. In addition to the separate Women’s Courts or Family Courts it is recommended that *Nari Bandigriha Adalats* be held in the nature of mobile judicial camps as an immediate modality for rendering speedy redress to women in custody. Whereas the Family Court or Women’s Courts can be the stable permanent mechanism, the mobile *adalats* or court is required as an immediate as well as instant corrective step. Such camps and courts should be held urgently and routinely in social welfare and mental health custodial institutions also to clear the backlog of pending cases, and to render speedy justice. The mobile adalats should be conducted on a district-wise or cluster basis so as to cover all prisons and non-prison custodial institutions. Its objectives should be to provide speedy justice.

**Supportive Measures**

479. To support the processual mechanism outlined above, there should be legislative and administrative arrangements which should help in the enforcement of fair custodial procedures and practices.

**B. LEGISLATIVE**

480. On the *legislative* side, the main recommendations are:

480.1 *Prison administration and administration of allied...*
institutions have been a matter of considerable debate. A frequent recommendation by JRC and other prison reform study groups has been that the subject of prisons should be brought into the Concurrent List of the Seventh Schedule of the Indian Constitution in order to strengthen the process of standardized and uniform national approaches to reform of custodial conditions. While some members of the present Committee have also felt that the cause of justice within prison administration will be advanced by including the subject of prisons in the Concurrent List, this is a matter which has many profound implications and may raise opposition as in our own Committee. Therefore, reliance upon Article 252 of the Constitution may be a good expedient where the object of uniform legislation can be achieved without interfering with the legislative lists. The modality of Article 253 can also be explored according to which, where India is a signatory to any international convention or any decision made at any international conference, association or other body, Parliament has power to make any law for the whole or any part of India. Whatever the modality, the present Committee wishes to strongly endorse the undeniable merit in uniform judicial and correctional processes and equitable custodial conditions for all citizens irrespective of where they live. This is the essence also of the equality clause in the Constitution.

480.2 There is need to have a Comprehensive Prison and Prisoners Act which can bring together in a single Act the provisions presently dispersed in several Acts. The JRC outlined a scheme for chapters for such national prison legislation (vide p 45-56 of JRC's Report). Annotations affecting custody of women need to be added to the JRC's draft. These should touch particularly on the special needs peculiar to women in prison, legal aid to women, and the rights per se of children of women prisoners.

480.3 An additional recommendation is to have a comprehensive code to cover the administration of all custodial institutions and the treatment of inmates of such institutions, with special provisions for the treatment and handling of women. A draft proposal containing suggestions for a legislative cum administrative code for custodial, correctional and habilitative justice to women (and girls) has been compiled by some members of the Committee which is enclosed in Part
for consideration of individual State as well as the Central Government. Should more than two States show interest in adopting such a code, the modality of Art. 252** could be utilized toward its gradual acceptance nationally with each State exercising its own discretion whether or not to adopt the Code.

The onus of activating such a process will lie with women’s and welfare groups and relevant departments in the State governments which will need to play an activist steering role.

480.4 A critical assessment of the efficacy and relevance of various legislations bearing on women’s status in custody and their criminality should be undertaken by the Law Commission in consultation with other legal social science and social defense bodies of repute and their findings should form the basis for concrete reform by way of depenalization, decriminalization, de-institutionalization, etc.

480.5 Until the above occurs, on an immediate basis, appropriate amendments and additional provisions should be introduced in the IPC and Cr.PC as well as in the Prison Act, 1894 and Police Act, 1861 to reflect the special needs of women in custody. The sentencing strategies appropriate to women particularly girls, are not now found in the IPC which adopts uniform tariffs of imprisonment and fine ignoring the general needs of gender justice. Similarly the Procedure Code does not note the special concession in the matter of arrest which deserves to be shown to women and also the facilities including legal aid women require in the police lockups and prisons. Some of these directives are available in the case law on the subject, among others, the Barse case. The resultant recommendations of the present Committee that women need not be arrested between sunset and sunrise and shall not be arrested except in the presence of women must be woven into the Police Acts and the Cr.PC. Even the radical recommendations that women need not be arrested at all but may be directed on their own bond to appear before an appropriate authority also calls for appropriate amendments to Cr.PC and Police Acts. Police stations serving women only and exclusive

*Two members of the Committee were not in favour of presenting the draft proposal.

**This is also the advice rendered by the Attorney General of India to whom the Committee had referred the matter. A copy of his opinion is included at the end of this volume.
lock ups under control of women police and like provisions for women's jails obviously demand suitable amendments to the Prison Act and the Police Act.

480.6 With regard to the Police Act 1861, the present Committee would like to endorse the recommendation of the Police Commission to "replace the existing outmoded Act with a new Act" (See Eighth and Concluding Report of the National Police Commission, Appendix I for the draft of the new Act). The present Committee endorses that draft with the proviso that its won recommendations concerning the administration of police and police lockups and the handling of women by the police should be appropriately incorporated in the Act. The duties of the police towards women and children, for instance, can be inserted in chapter IV of the draft, after item 44. A section on people and the police may also be usefully added to that draft, as well as to the preamble of the proposed bill.

480.7 The present Committee would like to recommend as an interim step, i.e. until 480.3 is undertaken, additional provisions in the existing legislation* bearing on visitatorial rights of recognized individuals and institutions, including access to institutional and inmate records; and institutional and individual accountability for any custodial lapses and excesses, especially any violation of the inmate's dignity or person or in respect of inmates who have absconded or disappeared.

480.8 The right of dependent children of custodialized women also need to be clearly outlined in the present legislation.

480.9 The Committee would like the new Mental Health Bill to reflect the specific recommendations made by the Committee in respect of the custody and treatment of non-criminal and criminal lunatic women and mentally distressed women in custody. The right to habilitation of the retarde or the mentally ill has to be duly acknowledged in Indian jurisprudence and specific provisions bearing on arrest, handling, custodialization, treatment and habilitation of the mentally ill need to be introduced in the proposed Act.

*Orphanages and Other Charitable Homes Act, Acts dealing with prevention of beggary, Mental Health Bill, ITPA, Prison Act, Police Acts, etc., and Rules under these and similar Acts.
C. ADMINISTRATIVE

481. On the administrative side, the Committee has made several recommendations which have already surfaced in previous chapters. These are recapitulated below in a capsule form for easy reference:

482. **Prisons**:

482.1 A *cadre of prison service* should be set up with recruitment and promotion from within the cadre.

482.2 There should be *enhanced and protected representation of women* in the prison cadre with appropriate recruitment, training, deployment and promotion provisions.

482.3 Apart from female staff in women's jails, there should be a women D.I.G. in the State Headquarters preferably from the prison services, particularly to look after the work relating to women prisons, women prison staff and women prisoners.

482.4 *Women superintendents* of separate prisons for women (currently six in number) should be made *fully autonomous* and the same principle should apply to all future independent institutions.

482.5 There should be *permanent warders and matrons* in institutions and it should be mandatory to recruit them rather than to rely on make shift substitute arrangements.

482.6 Any existing *discriminatory practices* arising from absence of 482.2, 482.4, 482.5, should be immediately corrected and further discrimination aschewed.

482.7 Prisoners' Councils or *Bandi Sabhas* should be set up in every prison to enable prisoners to interface meaningfully with other prisoners and with prison staff. These councils should also help to routinely air prisoners' grievances and difficulties and to serve as orientation sessions on rights and duties of prisoners, and of prison staff.

482.8 *Socio-legal counselling cells* should be set up in *every prison* which can assist the process of enforcing custodial justice and the adjustment, reform and habilitation of the woman inmate.

482.9 *Released Prisoners' Aid Societies* should operate in *every district* which can provide a single-window assistance toward the habilitation and mainstreaming of the released
prisoner (whether on completion of sentence or those released on parole, probation, etc.). These societies should have the close involvement of relevant government departments and non-government resources in the area.

482.10 The States must agree to enforce a uniform prison manual. Prison amenities for women and for their children, and the rights and duties of women prisoners should be clearly indentified preferably in a separate volume of the prison manual. (A draft manual concerning women prisoners is recommended by the present Committee, vide Part II).

483. Police

483.1 A cadre of women police (Vanita Police) should be set up with much greater representation of women in the national police than their current strength (at well below one percent). There should be appropriate recruitment, training, deployment and promotion provisions governing this cadre.

483.2 Separate police lockups should be established along the criteria recommended by the present Committee and in consultation with State IGs of Police. It should be mandatory for each police station to provide enclosed space for holding all arrestees and separated space for female arrestees. Separate Women's police stations where they exist should be suitably reinforced with adequate training and tools of the trade. In addition, separate booths for receiving women and dealing with their problems should be set up selectively on an experimental basis in areas where crime against women and/or female criminality are endemic. Such booths can function independently or be integrated with general police stations. In either case, they should be managed by an integrated cadre of men and women police specially trained to deal with women

483.3 A model police manual should be compiled on the lines of the model prison manual and it should be strictly and uniformly enforced by all States. The manual should carry indicative standards of minimum space and other facilities and procedures applicable to women when in police custody. The police should be widely consulted in the preparation of the manual.

483.4 A special unit known as Women's Assistance Police Unit (WAPU) should be created which should be combined
cadre of men and women police. It should deal specifically with crime preventive work and assistance to women at the time of arrest and in custody, as well as with the enforcement of social legislation.

484. Social Welfare and Mental Health Custodial Institutions

484.1 A manual to guide the management of these institutions should be compiled and uniformly enforced. It must specify minimum indicative standards.

484.2 Greater grant flexibility accompanied by tighter inspecting and monitoring mechanisms, should be devised which will help improve the efficacy of these institutions. Grants encompassing a longer tenure (three years rather than one year) and allowing flexibility vis-a-vis heads of expenditure, and performance evaluation related to persons rehabilitated rather than amounts spent should prove more worthwhile.

484.3 A national evaluative profile should be attempted to help streamline social welfare custodial institutions and their clientele, objectives, coverage, activities, etc. Similar profiles should be compiled at the state level. This evaluative assessment should be uniform annual exercise. A similar reporting exercise should encompass all mental health custodial institutions.

484.4 Judicial camps should be convened in these institutions to provide effective and speedy justice to the inmates consistent with the principle of public trial.

484.5 Socio-legal counselling cells should operate in these institutions to aid the inmates.

484.6 Sanstha Sabhas or inmates' councils should be set up in these custodial institutions which can help generate a more interactive custodial environment.

484.7 It is recommended that an escort corps invested with the necessary police powers should be developed to operate under the jurisdiction of the social welfare or women's welfare department at the state level. This corps should service the escorting requirements for inmates in social welfare custodial institutions. The members of the corps should be selected and given the appropriate training for carrying out this specialized function in a sensitive, efficient and responsible manner.
PARTICIPATIVE STRUCTURE

485. Laws without popular understanding and support, and organizational structures without people's helping hand, are innocuous gestures that can deceive none. On the other hand, the will of the people like the will of the administrator, can carry even a faulty law or a faltering organization to a fulfilling end.

486. In the context of custodial care and justice people's understanding, cooperation, and invigilation are the principal expectations. The objectives of custody and correctional administration must be understood and respected by the people. It is they who must fully accept the preventive and deterrent as well as the corrective and habilitative functions of custody. With that awareness, they can cooperate and be associated more meaningfully with the custodial and correctional process.

487. The main input from people and the voluntary organizations is invigilation. For that role to be fully effective, there must be access for recognized individuals and groups to custodial institutions along with full rights to inspect institutional records and interview inmates in confidence provided they have no objection and with appropriate safeguards to prevent mischief or abuse. Absence of such entitlements has undermined the successful functioning of legal aid for instance.

488. The Committee believes that access by such groups can be institutionalised and should be given due standing in law as has been done in case of the Family Court (vide Section 5 of the Act which provides for the association of social welfare agencies, workers and other specialists as can help the court to exercise its jurisdiction more effectively in accordance with the purpose of the Act).

489. The Committee is aware of the practice of appointing visitors to institutions and the dissatisfying experience with many such visitors who tend to be half hearted, indifferent, passive or not sufficiently activist in their approach. The selection of such visitors must be based on merit, commitment, and the time which the persons are actually able to devote to their function, rather than 'social' eminence, at the same time ensuring larger representation of women visitors. The Committee also feels that including individual in their
professional capacity will be more helpful in mobilizing institutional support through individual appointment. The selection must also represent a broad mix of all relevant disciplines. The setting up of such boards must be mandatory for all custodial institutions viz., prisons, police lock ups, social welfare and mental health institutions, and any other. The approach of the visitors, however, should not be adversarial but assist the custodial authorities to deal more constructively with the inmates.

490. Whether the visitors' boards or with public generally, the custodial system must discard the stance of hostile suspicion and mistrust. Appropriate linkage should be fostered between custodial authorities and voluntary groups/individuals in protecting the rights and dignity of women not only in custody but also outside.

491. One sizeable source to supplement the corporate custodial resources is represented by the student and faculties of law schools and schools of social work. The enthusiasm for public interest causes is relatively easy to drum up in the younger generation who should be provided legitimate means of associating meaningfully with the criminal justice and correctional system. The present Committee has made a specific recommendations for the creation of socio-legal cells to be jointly run by law schools and schools of social work. Such cells should be attached to every custodial centre or a cluster of centres. Placement with these cells should be accredited course work and be graded. The objective should be to take socio-legal consulting to those who are in most need of it, and to internalize its availability to those in custody. The counselling cell should also encompass the custodial staff serving a useful safety valve functions.

492. People's participations has one other indispensable dimension. It is to motivate those who operate the system to manage the system better. For this, they must believe in the purpose for which the system was set up and in the modalities established to achieve that purpose. In the context of present report, the main crunch of stringent enforcement lies with pushing system's operators to get actively into the task of promoting the objectives of custodial and gender justice. It is they who need to understand that 19th century precepts are unfit for current aims for custodialization. When they take a person, especially a women or a child in their charge, they are
morally responsible for making it better adjusted in custody and eventually in society. Any departure from or aberration of this corporate custodial philosophy must be met with the strictest deterrent action, just as any visible success in implementing that philosophy should be rewarded with due recognition and wide publicity. A conglomeration of workers can be turned into a cadre with steady committed performance only when the rewarding system is as lucidly clear as the disciplinary measures that apply to managerial deviance. The current criminal justice and correctional system suffers from a gap between presumed objectives and enforcement. Ambiguity is counter-productive and presumptions and assumptions should be clarified in the form of clearly stated objectives, which is the recommendations.
NATIONAL POLICY FOR CUSTODIAL JUSTICE TO WOMEN*

Preamble

Recognising the value revolution enshrined in the Constitution of India especially in the field of human rights and gender justice and finding the need to extend the application of these within incarcerative and quasi-custodial circumstances;

Expressing appreciative acceptance of the exposition by the Supreme Court of India and the high courts of the Principles, rules of conduct and State obligations flowing from constitutional provisions bearing on Fundamental Rights and Directive Principles of State Policy vis-a-vis women in custody;

Taking note of the prescriptions in international instruments, with special focus on human rights and prison standards and objectives, and acknowledging India's respect for such paradigms of an emerging world jural order;

Understanding the biological vulnerability, as well as socio-economic and cultural disabilities of women and sharing the constitutional perspective of special provisions for women as integral to the achievement of equality between men and women in Indian Society;

Recognizing the small but growing numbers of women in custody and the risk of greater female participation in criminality;

Keeping in view the pivotal role of the woman in the family, her relative non-violence and the lesser security risk posed by her;

Appreciating the importance of creative institutional and non-institutional experiments in preventing further demoralisation due to custodial distress;

Realising the need to re-examine the statutory provisions, prison and police manuals and other administrative regulations the majority of which are of pre-independence vintage, in order to redress operational deficiencies and to prevent custodial excess and injustice;

And convinced that setting out State's practical creed, and presenting fresh proposals pertinent to custodial institutions is
imperative, the object being to express Government's concern and specific intention to all sections of society and the relevant civil services;

To, therefore, assist and guide a vital restructuring of the laws and procedures with respect to women in custody, the Government of India is pleased to adopt the following National Policy for Custodial Justice to Women:

ARTICLE I

Respect for gender dignity and habilitative concern for women must inform all relevant institutions and personnel in the criminal justice and correctional system.

Women shall be shown special treatment wherever they interface with the system whether as complainants, victims, accused, witnesses or inmates of institutions.

ARTICLE II

The State shall endeavour, as far as possible to set up specialized service and institutions with exclusive jurisdiction for meeting the needs of women coming in contact with the criminal justice and correctional system. Separate prisons and police lockups, correctional centres, and separate courts inter alia shall be set up to exclusively deal with women.

ARTICLE III

Recognising that women's equality in life and in law are inseparable the present separation between the criminal and correctional justice system and the social service delivery system shall be replaced by an integrated and fused approach to developing services to women. Health, welfare, education, functional and legal literacy, employment training and emotional and cultural mainstreaming programmes shall encompass women in custody, as well as those released back into the community.

ARTICLE IV

All substantive and procedural laws pertaining to custodialization of women, shall meticulously respect the women's need to remain a parent and the child's need for a parent.

Recognizing that children of custodialized women are
innocent, the State shall conscientiously respect the rights and privileges of the children accompanying the women in custody.

ARTICLE V

Institutions authorized to keep women and children in custody, and their staff, shall be inspired by same ideals and governed by the same values as above spelt out. The police, prison, correctional, probation and judicial personnel involved in the handling of women shall be specially trained and their knowledge updated in the law and procedure applicable to women.

ARTICLE VI

Bearing in mind the pathological circumstances that bring women into conflict with the law, institutional treatment shall be informed by an insight into the human personality and the social causes of women's deviance. A cadre of staff specially trained in appropriate disciplines and skills shall be ensured by government for achieving the goals of correction.

ARTICLE VII

Accepting their innocence in law and their special needs, and recognizing its moral obligation to them, the State shall set up expert service for the care and habilitation of mentally, physically and socially handicapped women.

ARTICLE VIII

The State shall consistently pursue a policy of enhanced representation of women in the criminal justice and correctional system to instil greater confidence in women coming in contact with the system. The status accorded to custodial and correctional personnel shall adequately and appropriately reflect the significance of their input and the unusually demanding and stressful nature of their work.

ARTICLE IX

Taking account of the special role of women in family life and societal development, and the vulnerability of girls, the State shall endeavour to avoid the arrest and detention of females to the extent possible and without threatening the safety
of the State in any manner. Save in the rarest of rare cases, to be specified, women shall not be arrested between the sunset and sunrise. Likewise, the arrest of women by the men of the police force acting alone shall be avoided.

ARTICLE X

Arrest and search of women, including interrogation, shall be conducted according to strict standards of decency, and in a manner not to violate the modesty and dignity of womanhood.

In all cases when a woman is taken into custody, all existing provisions regarding protection of her person and her rights shall be scrupulously adhered to. At no stage during and after arrest, will a woman arrestee be left unguarded by policewomen or another woman authorised by government.

ARTICLE XI

Bail, and not jail, shall be the rule of law, save in rare exceptions necessitated by nature of offence, investigation and trial. At the same time, wise circumspection shall play upon the policy of enlargement of dangerous or endangered women in custody specially in those cases where the interest of the society, and considerations of the arrestee's safety and freedom from ensnarement by anti-social elements are to be reconciled. Protective custody is preferable to release to exploitative elements that use bail policy as cover-up strategy.

ARTICLE XII

To usher in humanism wherever women are detained, in penal or other custody in addition to basic amenities and privacy, the State shall provide the essentials for meeting women's special needs, including those promotive of her dignity.

ARTICLE XIII

The State shall ensure that victims, witnesses and all other citizens who come in contact with the criminal justice and correctional system, shall receive fair, concerned consideration and assistance including restitution and compensation wherever appropriate.
ARTICLE XV

Sentences and sentencing of female offenders shall assume a pronounced habilitative goal in view of women's special place in family and society. Incarceration shall be the last choice in the sentencing of women offenders. Short-term imprisonment shall be avoided for women offenders, in favour of non-custodial and community based options.

Welfare of children coming in contact with the criminal justice and correctional process shall be a relevant consideration in the sentencing and disposition of women, and such children shall enjoy protection from the detrimental effects of their mothers' arrest and incarceration.

ARTICLE XV

The State wide Art. 39 A of the Constitution, is pledged to secure that the operation of the legal system promotes justice, including custodial justice. Fundamental to this rule of governance is the obligation of the State to provide free legal aid to all women in custodial circumstances, including while in police lock-up, prison, welfare home, mental asylum or other, in order to ensure the rights of those in custody.

ARTICLE XVI

The rights of inmates and remedial procedure shall be properly brought to the notice of those in custody. Practices derogatory to women shall be scrupulously avoided and any violation brought to the notice of the authorities shall be sternly and promptly dealt with.

ARTICLE XVII

The object of the custodialization of women not being merely either the protection of the society or herself, but ultimate self-reliance, this shall be nurtured by a policy of progressive and supervised inmate participation in, and partial responsibility for, a variety of activities. Accomplishment of economic independence will be pursued through a plurality of flexible programmes in which help from credit and suitable institutions will be sought. Wages of rehabilitative value, and not discriminatory between men and women, will progressively govern the system.
ARTICLE XVIII

In the operation of welfare measure for women in custody, Government realise the legitimacy of responsible citizen participation. Provision shall, therefore, be made to induct, recognise and enhance the involvement particularly of women's organisations; activists, lawyers and social workers at every stage of the criminal justice process. Such voluntary participation as receives recognition from the State shall be bound by same values, norms, discipline and training as required of government agencies and personnel.

ARTICLE XIX

In pursuance of the citizen's rights to information, the State shall ensure access to institutions and information regarding custodial conditions and institutional management. Such access shall not prejudice the inmate's right to assert privacy, as also the specified requirements of individual, institutional or State security.

ARTICLE XX

Research and development in every field of administration is a pre-requisite for social advancement. It is essential, therefore that systematic enquiry into the nature and extent of women's involvement in crime, as well as women's interaction with social welfare and law-enforcement systems and the efficacy of custodial and correctional modalities vis-a-vis women is actively undertaken. Government purpose, through research bureaus in the police, prison and social welfare departments, to thus pursue a policy of investigation, innovation and evaluation. The enforcement and relevance of this policy pronouncement itself shall be periodically evaluated.

ARTICLE XXI

Government are aware that only a holistic perspective can ensure a scientific and humanistic approach to the treatment of women in custody. The ensemble of correctional processes is so intricate and multi-dimensional that success cannot be achieved only through bureaucratic processes. Government therefore, shall set up a National Authority on Custodial Justice to Women. This shall be an apex monitoring and advisory body.
for coordinating policy implementation by the various ministries and departments concerned with women's welfare home, justice, law, social welfare and social defense. There shall be similar bodies at the State level as well, linked with the National Authority, and have the power to monitor, introduce tonic changes, and engender a sense of accountability in the various infrastructures representing governmental and non-governmental agencies.

In the composition of the above Authority, representation of voluntary organizations and individuals of independent merit shall be necessarily provided for.

ARTICLE XXII

In recognition of the need to evolve and maintain high standards of professional competence, Government propose to authorize an association, composed of practitioners, academicians and individuals with active current experience in the correctional discipline to assist the proposed National Authority. Such association shall also be delegated the function of accrediting or withdrawing recognition to correctional and custodial institutions for women.
SUGGESTIONS FOR A LEGISLATIVE CUM ADMINISTRATIVE CODE FOR CUSTODIAL, CORRECTIONAL AND HABILITATIVE JUSTICE TO WOMEN
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I. BACKGROUND

Several committees, commissions and academic investigations have focussed on prison and correctional reform and on the status of prisoners generally. The National Expert Committee on women prisoners which was the first exclusive official enquiry into women in the penal and correctional system has brought out a variety of disabilities women and girls suffer because of their gender in the criminal justice and correctional processes and in various custodial situations. It has also recommended beneficial provisions for women in the administration of criminal and correctional justice. Drawing on relevant recommendations of previous committees and commissions and its own observations and taking into account constitutional provisions, existing case law, and executive directives on the subject, the National Expert Committee proposed a Declaration of a National Policy on Custodial Justice to Women. The Policy outlines the broad objectives and procedures which should regulate the custody of women and the treatment meted out to them at various stages of the criminal justice and correctional process. The present proposal is a sequel to the policy. The suggestions made here are of a recommendatory nature and some of them may partake the character of rules and may not be strictly part of a Code or Law.

II. OBJECTS AND REASONS

A number of legal and other provisions currently exist which bear on the penal and non-penal custody of women, but no comprehensive law has been written specifically about the penal and correctional system in relation to women. The situation therefore calls for the adoption of a code containing comprehensive guidelines for the handling and treatment of women in judicial, correctional and habilitative process.

The present proposals partake of legislative and administrative provisions and are calculated to clarify the scope of gender justice and to streamline administrative discretion in the larger interest of equal justice and protection under law to women.

Article 15 (3) of the Constitution empowers the State to make special provisions in favour of women in order to realize the right to equality before law guaranteed in Article 14. Article
A further makes it obligatory for the state to promote equal justice. Article 51A (e) casts a fundamental duty on citizens including public functionaries to renounce practices derogatory to the dignity of the women. There is therefore a clear and persuasive mandate for formulating a specific code for protecting gender dignity and ensuring gender justice to women. The adoption of such a code moreover is necessary to counter the recognized discrimination against women in the criminal justice and correctional process and the denial of equal justice to them.

III. USAGE AND UTILITY

The term ‘code’ is not used here in the sense it is understood in common law for which there are examples in our law in the form of Indian Penal Code, Code of Criminal Procedure etc. In the present context, ‘Code’ seeks to convey a comprehensive statement of principles, objects and intent of the Constitution, the legislature, and the judiciary on the subject of women in the criminal justice and correctional processes. The adoption of the Code will enable the administration and the judiciary to develop the application of the National Policy on Custodial Justice to Women in a manner consistent with the legislative objectives. Admittedly, many of the provisions in the proposed Code already exist in the law either of the Centre or of the State. They are also found in judicial directives and executive instructions. It is considered necessary to codify them and relevant additional provisions in a single document for convenience and easy access as well as for integrated application. The Code can even serve situations not anticipated by the legislature.

Marking a departure for the complex style in which legislation is conventionally drafted in our country, the present Code is deliberately worded in a simple manner so as to be widely understandable to the people and to the administrator. While attempting to be comprehensive, the Code is not intended to stifle state, non-governmental or individual initiative in furthering the objectives of the Code and of the National Policy on Custodial Justice to Women. Although strictly speaking a Code may be understood as a legislative project here it is used to cover a compendium of mandates regardless of their character as falling within legislative or administrative spheres. The appropriate authority may
legislate a comprehensive Code and supplement it with rules, regulations and administrative instructions.

IV. PREAMBLE

Recognizing the value orientation and gender solicitude enshrined in the Constitution of India and the need to extend their application to the law and practice within the incarcerative and quasi-custodial situations;

Taking meaningful note of the solemn commitment on criminal justice, and custodial, correctional and habituative standards contained in international instruments;

Acknowledging the wholesome directions and interpretations on human rights and Constitutional guarantees arising from the court decisions vis-a-vis custodial care;

Fulfilling the Constitutional promise of special provisions for women in providing equal justice;

Considering the small but growing numbers of women in custody and the need for the protection of womenhood in various custodial situations;

Realizing the inadequacies of existing law and practice in criminal justice and correctional administration; and

Pursuing the goals enshrined in the National Policy Statement on Custodial Justice to Women approved by Parliament on...........

It is proposed to promulgate the following Code for the guidance of all concerned in the criminal justice and correctional system.

V. INTERPRETATION

The Declaration contained in the National Policy Statement on Custodial Justice to Women and the United Nations Conventions and Declarations on status and treatment of women to which India is a signatory shall inform the interpretation and application of the provisions of this Code. For the sake of convenience, these relevant documents along with excerpts from key legislations bearing on women in custody are incorporated as appendices* to this Code and shall be treated as part of the Code.

*Not included with this proposal.
Without prejudice to the principles and policies enshrined in the abovementioned documents, in all cases of doubt, such interpretation may be adopted which is favourable to the special status and dignity of the woman. In general, a construction which would promote the broad legislative purpose will be preferred to one which does not.

VI. PURPOSE

The purpose of this Code is to eliminate discriminatory and deleterious practices in judicial, custodial and correctional processes which handicap women in the enjoyment of their human rights or undermine their correction and habilitations. Measures which seek to restore women to their social, familial and economic potential and personality and protect their dignity when under State care and custody shall be taken as a statutory mandate.

VII. WOMEN AND THE POLICE

1. Taking note of the special role of the women in the family, the greater probability of her being available for assisting the criminal process, the potential for abuse of her person in custody, and the lesser threat posed by her to the security of the society; it shall be the policy of the State including the police to avoid the arrest and detention of females excepting when there are special reasons recorded in writing to disregard this policy in specific situations.

2. Whenever arrest is to be made, women's submission to custody shall be presumed unless proved otherwise; there should be no occasion for a male police officer arresting a woman to touch her person.

3. Except in unavoidable circumstances, no woman need to be arrested between sunset and sunrise.

4. Only officers of and above the rank of Assistant Sub-Inspector should effect the arrest of a woman.

5. In all cases of bailable offences, bail on her bond shall be granted forthwith by the police themselves.

6. As far as possible, in non-bailable cases also, bail should be granted unless special circumstances warrant a
different course, in which case, the arrested woman shall be remanded to judicial custody with utmost expedition.

7. Such custody shall only be in a separate police lock-up for women and, where such facility is not available, in a special home or institution designated under any law for the time being in force to receive women. At no time shall a woman arrestee be left unguarded by a woman guard or surrogate.

8. In all places of police custody, basic amenities such as living space, water, toilet, food, medical examination and care, and provisions to meet the special needs of women shall be provided.

9. The State shall, as soon as may be, draw up a charter of minimum standards of treatment, including amenities which shall obtain in police custody for custodial inmates as well as staff. The standards shall also spell out the rights and duties of inmates and staff, and shall serve as a manual of instructions and be enforceable in the manner indicated.

10. When arresting a woman, proper arrangements for the protection and care of her children shall be the responsibility of the State. Children who needs to be custodialized jointly with their mothers shall enjoy rights justly needed, while in custody, in terms of food, living space, health, clothing and visitation.

11. The person of a woman shall not be searched except by a woman duly authorized by law, and in a manner strictly in accordance with the requirement of decency. Whether in custody or in transit, the arrested woman must always be guarded by a woman police or a female surrogate. While escorting, a relative may be permitted to accompany the female arrestee.

12. Whenever a woman is to be examined by the police or other investigative agency as a witness, it should be done only at her residence; nor should she be summoned to the police or investigative station unless she expresses her preference to be examined in the station.

13. Before taking a woman into custody, the police shall record the fact in relevant records and responsible
officers shall ensure that 'detention' without making formal entries is strictly avoided.

14. All senior police officers visiting police stations in their official rounds must, as a working rule, enquire personally into conditions of woman taken into custody and check the promptness with which entries are made, information forwarded, grounds of arrest furnished to the accused, etc. The result of the enquiry must be recorded by the officers.

15. Information on women in custody should be made available to recognized social organisations and individuals on request. Persons and institutions accredited as visitors should be allowed, as of right, free access to police stations and records.

16. Whenever a woman is arrested by the police without warrant, she must be immediately informed of the grounds of arrest and the right of bail.

17. In exceptional circumstances when a woman arrestee is taken to a police lock-up, the police should immediately give intimation to the nearest Legal Aid Committee or recognised legal services body which must render all necessary legal services at State expense.

18. On arrest, the police should immediately obtain from the arrestee the name of a relative or friend to whom the intimation of her arrest should be promptly given.

19. A substantial increase shall be effected in the woman component of the police force at all levels and adequate training given.

20. In endemic female crime areas, or wherever otherwise desirable exclusive police stations, or booths and counter within police stations, shall be set up to deal with women needing protection of, or coming in conflict with, law. Such booths and police stations shall be managed by an integrated cadre of men and women police specially trained and sensitized to deal with women.

21. Crime and arrest data gathered by the police should maintain separate streams of information on men and women. Sex-wise data should be compulsarily compiled and displayed in all police stations and reflected in all reports on crime, arrest and disposal.
22. Any violation or deviation or action on the part of any officer which defeats the policy of the above provisions shall be punished after due enquiry by a judicial magistrate of the first class. The nature and quantum of the punishment shall be decided by the sessions judge having the requisite jurisdiction. An appeal to the high court shall be available for any aggrieved party.

23. Where the wrong is proved, the wrong-doer and whether proved or not, the State shall make fair reparation to the victim to be determined by the sessions judge.

VIII. WOMEN AND THE JUDICIARY

1. In protecting the rights of the women in the criminal justice process from arrest through release, the judiciary has special responsibility to ensure that the principles and purposes of this Code are implemented. Judicial officer shall always respond to the distressed call of women in custody irrespective of their jurisdiction or status in the judicial hierarchy.

2. When produced before the magistrate, he or she shall invariably ask the woman of the treatment given to her by the police and of any other special problems she encounters in her situation. Every effort shall be made to resolve those special difficulties and in cases where an immediate solution is not possible within the law, the Magistrate may explain the position to her, and initiate appropriate action for redress.

3. Except in extreme situations when detention is desired, the Magistrate shall release the woman on her own bond, the conditions of which shall be explained to her by the Magistrate.

4. No judicial remand of women will be allowed except into those institutions which are completely under the control of women officials.

5. If considerations of arrestee's own safety and freedom from ensnarement by anti-social elements, demand detention in public institutions, bail shall be refused to the woman in her own interest, unless she specifically states her willingness to be thus released even after being alerted to the above considerations.
6. In the disposition of women to custody or otherwise the Magistrate must enquire and direct that suitable arrangements for the welfare of her children be made in a manner that protects the rights of children.

7. Speedy trial of all cases involving women is a legal and moral requirement. All magistrates shall proceed with such trials with utmost expedition, with due regard to the principle of limitation where applicable. Special tribunals and procedures to carry out this directive shall be organized by Government in consultation with the High Court.

8. To the extent possible, the State shall set up Women's Courts to try women offenders. Where joint trial with man is involved, the Courts may use their discretionary power whether to hold joint or separate hearings.

9. Rights to legal aid in criminal proceedings is a fundamental right. In the case of women, free legal aid shall be given from the time of arrest and Magistrate shall ensure that adequate legal services are provided.

10. Magistrate shall inform women, when first produced, of their right to legal aid at State expense and direct the provision of necessary services. They shall also explain the nature and scope of the proceedings against her and her rights in it.

11. When women are examined in court as accused or as witnesses, due courtesy and decency shall be shown. If circumstances so demand in the interest of modesty and privacy of women, the trial may be held in camera or the woman may be examined on commission through women advocates.

12. Long cross-examinations and repeated examinations may be avoided in the case of women and if necessary, information may be sought by affidavit and/or interrogatories.

13. Representation of women at all levels in the judiciary is essential to promote gender justice and women may be appointed in adequate numbers, among others, for processing cases involving women.

14. In courts processing cases involving women, the court
staff should consist of sufficient number of women employees in order to avoid personal difficulties which women accused or women witnesses may face the male dominated institutions and cadres.

15. Sentences and sentencing in respect of women offenders may have to take note of the solidarity of the family and the woman's unique role and needs. Except when unavoidable, custodialization shall not be resorted to. Community based treatment of women being ideal for them, their children and society, it is desirable to prefer such disposition.

16. While sentencing women to imprisonment or any form of custodialization, suitable arrangements should be made for the custody and welfare of their children.

17. Courts will take continuing interest in the welfare of women in custody and ensure that they receive proper treatment, including psychiatric and habilitative services.

18. Magistrates shall make frequent visits to jails and custodial institutions within their jurisdiction and shall file periodic reports to the superior judicial officers on the status and condition of women in such institutions.

19. In case of women in custody for long periods, premature release by reducing the sentence by courts may be considered. Parole, furlough and other forms of supervised release may be widely resorted to.

20. Short term sentences of less than 6 months may be totally avoided in case of women. Similarly simple imprisonment which is demoralizing and wasteful shall be avoided.

21. Where, owing to small numbers, the woman's custodialization amounts to solitary confinement, the court shall move for her immediate release unconditionally, or on probation or parole as may be deemed fit.

22. In the disposition of women offenders, courts should mandatorily call for and give due regard to the probation officer's report and to the report of medical/psychiatric examination. Where probation officers are not available, probation investigation should be entrusted to recognized and accredited institutions and individuals.

23. Women, unless economically independent, shall not be
sentenced to fine and alternatives such as admonition, conditional discharge, probation under supervision etc. should be resorted to.

24. The courts shall not sentence any mentally sick woman or retardates to prison and shall ensure the immediate transfer of any existing cases of non-criminal and criminal lunatics to mental homes for therapeutic and habilitative care.

25. Insufficient escorting staff or facilities shall not be used as grounds for postponing the hearing or disposition of women. Whenever necessary surrogate escorts should be used. In addition, the State Government through the Social Welfare Department should develop an escort corps to serve the escorting requirements of female inmates in various custodial situations.

XI WOMEN AND PRISON ADMINISTRATION

1. All custodial premises for women prisoners should have a private, secured and therapeutic environment.

2. As far as possible each State should have at least one or more separate jail for women.

3. There should be separate custodial facilities for convict and undertrial women. Separate institutions or reception centres where undertrial and remanded women when necessary may be kept, should be set up in larger cities, district headquarters, and in female crime endemic areas. Where convicts and undertrials are currently housed in one institution, they must be kept apart in separate wings until independent facilities are set up.

4. Proper medical facilities and medical examination of women inmates on admission and periodically thereafter are to be ensured in all custodial centres including prisons, jails, sub-jails, etc.

5. Qualified lady doctors and nurses should be attached on a visiting basis to every female prison and custodial centre with women inmates.

6. Expectant mothers in custody shall be shown special consideration by way of medical and nutritional care, education in child rearing and mother craft and assigned
work in accordance with their expectant status.

7. Women suffering from contagious diseases shall be placed in isolated care or at a health facility if necessary until they recover.

8. Scale of diet for women prisoners shall be strictly according to medical norms and special extra diet shall be given if medically prescribed.

9. Standard clothing should be allowed to every female prisoner and extra clothing to sick and old may be granted as medically advised.

10. For personal hygiene, female prisoners may be provided with comb, mirror, washing soap, bath soap, oil, sanitary napkins, etc.

11. The accommodation, cleanliness and sanitation provided to female prisoners shall conform to prescribed standard and norms.

12. Work in prison shall not be treated as punishment but as habilitative therapy.

13. Female prisoners shall be paid equitable remuneration for their work in prison. Wages paid shall be of a habilitative value. Out of their earnings, they will be allowed to purchase essential articles for their use while in custody, and to save and/or remit to their families.

14. The menial duties in the female prisons or ward shall not be assigned to inmates and no monetary or non-monetary incentive should be applied to such work. The prison budget should provide for this function as a routine staff expense.

15. As far as practicable, women prisoners shall be imparted training which will make them economically self-sufficient and capable of functioning independently in society. Choice of skill taught will be related to marketability and independent earning potential. Some representative trades are: home science, mother craft, nursing, handloom weaving, hosiery, toy-making, ceramics, stationery articles, gardening, fruit preservation, electronics, etc. In addition, socially useful knowledge such as use of bank, post office, health centre, employment exchange, saving schemes, etc., will be imparted to the
prisoners. Educating women in their rights, status, role and capabilities will be mandatory.

16. A reasonable number of interviews with the relatives and unlimited opportunities to write letters to them and receive letters from them should be allowed to the female prisoners.

17. Compulsory education for illiterate prisoners shall be provided. Literate prisoners will be motivated to pursue further learning.

18. Recreational facilities, books and reading materials, etc., should be provided to female prisoners and they should be encouraged to use them. This should include the use of religious books of the prisoner's choice. Pursuit of painting, music, theatre, etc., shall be encouraged as part of correctional therapy.

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

20. In no circumstances should girls be imprisoned or kept in mixed custody with adult women.

21. Habitual offender, prostitutes and brothel keepers must be kept separate from other inmates in prisons.

22. No mentally afflicted women should be placed in prison and steps for their immediate transfer to mental homes must be effected.

23. Women and children held as victims or in protective custody or required for purpose of giving evidence must not be kept in jails and should be transferred to designated welfare and protective homes.

24. Inmates with children require special attention of prison authorities and suitable orders may be taken from court to ensure the interest of both mother and child.

25. As far as possible, children of inmates may not be kept within adult jails and visits by children to the inmates may be liberally allowed. In cases where imprisonment is
unavoidable, children of prisoners must have rights per se in terms of food, spare clothing, education, recreation, visitations, etc.

26. At the time of release of the child, on account of reaching maximum permissible age, the court and the prison/custodial management shall ensure that the mother-child link is not severed.

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

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

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

30. No female prisoner shall be liable to any form of corporal punishment or use of handcuffs, fetters or isolation as a form of disciplining.

31. No female prisoners shall be punished without being informed of her offence and allowed an opportunity to explain her conduct. Exceeding the sentence is illegal. For any custodial excess of neglect, the responsible staff shall be dealt with severely and promptly.

32. Female prisoners shall be searched by female wardens in the presence of other senior women personnel with strict compliance to privacy and decency.

33. Complaints from female prisoners shall be registered, investigated and promptly remedied. A grievance box may be provided for this purpose. No harm should come to any complainant as a result of articulating her grievance or for deposing against custodial staff.

34. The prison manual must be physically available in every jail for easy reference by inmate and staff or accredited visitors.
35. A separate volume of the prison manual should deal with the custody and treatment of female and should be circulated amongst staff and inmates or for reference by accredited visitors.

36. Rights, special privileges and duties of women prisoners, should be widely publicised within the prison and each inmate should have full right of access to information in this regard.

37. Before a female prisoner is released, her relatives shall be informed and where no relative exists or shows up, the released prisoner shall be sent with a female escort.

38. Appropriate assistance shall be rendered to every female prisoner on release whether during or after completion of sentence. For this purpose, a centre for assisting released prisoner shall be set to service a cluster of prisons and custodial institutions on an area-wise basis. Even without the centre, the prison authorities shall take necessary steps to arrange the rehabilitation of the released prisoner either through the family, the relief centre or a voluntary organization.

39. Aftercare and short-stay homes for women prisoners may be established in every state to serve those prisoners who are homeless or rejected by their families.

40. Women’s representation in prison services must be enhanced and adequate compensation given to them in lieu of lack of promotion opportunities on account of fewer job opening and in recognition of the demanding and stressful nature of their work. Adequate training and retraining should be provided for female custodial and prison staff to enable them to update their skills.

41. Apart from female staff in women’s jail, there shall be a women D.I.G. in the State Headquarters, preferably from the prison service, to specially look after the work relating to women prisoners.

42. Democratization of prison administration must be systematically engendered and a new prison culture based on human and constitutional values developed. For this purpose, both pre-service and in-service training and sensitization are necessary of male and female cadres associated with the administration of prisons.
43. Legal aid and counselling through professional bodies assisted by para-legal and social workers should be institutionalized in every prison and custodial institutions. Law schools and schools of social work should be encouraged and permitted to render socio-legal counselling service to the inmates.

44. Visiting Committee's to jails should be constituted in consultation with professional bodies and university departments of law, criminology, social work and social sciences from the neighbouring area. Visitor should be nominated on the basis of merit, public spiritedness, activist record and actual time likely to be made available to the visitorial function.

X. WOMEN AND NON-PENAL CUSTODIAL INSTITUTIONS

1. The custodial conditions in non-penal institutions shall be superior to those in penal institutions and in no event shall be below the standard prescribed for female prisons.

2. A manual for non-penal custodial institutions shall be developed and all institutions and their inmates, as well as accredited visitors shall have access to copies of it.

3. Institutions shall be set up to service specified client groups in a specialized manner. No indiscriminate mixing of various categories of client shall be allowed. Undertrial or convicted women shall not be placed in such institutions under any circumstances.

4. Model rescue homes and the beggar homes shall be set up for women in every metropolitan area and in such urban or district centres where the need to service these categories of women is greater.

5. Beggar homes for women and like institutions shall be centres of corrective treatment and rehabilitation and not for mere detention.

6. All existing programmes of socio-economic assistance to women shall also encompass women in non-penal custodial institutions both while in custody and on release.

7. Inmate's Councils or Sanstha Sabhas should be set up in every custodial institution to enable inmates to interface
meaningfully with each other and with the custodial staff.

8. Socio-legal counselling cells should be set up in every non-penal custodial facility for women to assist in their socio-economic and emotional rehabilitation.

9. Legal aid camps and wherever possible *Lok Adalats* should be organised periodically in custodial centres. Voluntary agencies may be encouraged to give legal literacy and to assist in securing redress for inmates both in civil and legal matters.

10. Accredited voluntary organizations should be allowed to visit and invigilate the wholesome enforcement of the Code and the manual in the institutions.

11. Visitors appointed should be eminent people and should be selected in consultation with professional bodies and university departments of law and social work, and with due regard to active, activist record and actual availability of time.

12. Women students of law and social work, and women's groups should be encouraged and permitted to render services to inmates of non-penal custodial institutions.

13. Special steps should be taken by custodial authorities at the time of release of inmates to assist in their rehabilitation through close liaison with their families and/or recognized voluntary organizations.

14. A very strict accreditation process and machinery should be operative in order to discourage delinquent institutions and honour competence.

15. Children of women inmates require considerable handling and all endeavours in custody shall be toward reinforcing the inmate's links with the child.

16. Wherever children need to be custodialized with the inmate mother, the institution shall make adequate provisions either in the institution or elsewhere. In all such cases, the custodialized child shall enjoy rights per se to food, space, clothing, care, education, etc.

17. Literacy and skills training shall be mandatory for all inmates irrespective of their grounds or nature of custody.
18. Custodial staff shall be sensitized toward a humanist approach to management of the inmates and to pay due regard to their innocence in law.

19. Custodial neglect, abuse or excess shall be dealt with due severity and the management or the State shall be liable for compensation to the victim.

20. The state social welfare departments should develop and escort corps of specially trained persons who can service the escorting needs of various institutions.

XI. WOMEN AND MENTAL HEALTH CUSTODIAL INSTITUTIONS

1. Mentally disturbed women are entitled to proper medical care and to education, training and rehabilitation. A companion right of the female retardate is freedom from sexual or their exploitation.

2. Mentally disturbed women shall not be detained in prison and they shall be given proper treatment in mental hospitals. Those that are currently into prison shall be immediately transferred to a mental health facility.

3. At no time shall mentally ill women be left unguarded by women escort or guards.

4. Juvenile girls who are mentally sick must receive special therapeutic attention and protection from physical or other exploitation, and custodialized separately from adult female retardates.

5. Institutional facilities in accordance with the Mental Health Act should be established in every state for rendering psychiatric justice to patients.

6. Conditions in mental hospitals should strictly conform to the medical standards and supervisory staff should be personally responsible for ensuring them.

7. Watchdog committees of social activists should be constituted for each mental home or hospital and they should file reports after periodic inspection. Such reports should be a basis for continued recognition and accreditation of the concerned institutions.

8. Medical and custodial staff in mental homes and hospitals found negligent must be severely dealt with.
9. Legal aid camps must be organised in mental homes and all reprocessual and legal help rendered to inmates to overcome any difficulties arising from their custodialization.

10. The present distinction between criminal and non-criminal lunatics is unsatisfactory and ought to be substantiated or disproved through appropriate mental health research. The State should encourage research in that direction.

11. The State may utilize the services of a nationally reputed mental health institution (NIMHANS) to streamline and upgrade mental health facilities and approaches.

12. Custodialization and treatment of the mentally distressed should appropriately reflect the new care and therapeutic approaches. Greater use of community based and supervised options, including day care centres for the mentally ill, and open, non-cellular custodial residences, etc., should be promoted.

13. In the therapy and habilitation of the mentally ill women, their families shall be consulted and closely associated wherever possible.

14. Training should be given to custodial as well as medical staff in mental homes and hospitals to understand and deal sensitively with the mentally ill. Similar sensitization will be necessary in case of staff of all penal and non-penal custodial centres (viz., police, prisons, welfare homes, etc.)

XII. WOMEN IN CUSTODY AND LEGAL AID

1. Free legal aid at state expense is the fundamental right of every woman in custody. All custodial institutions should arrange for systematic delivery of legal services to every inmate in need of such service.

2. Legal aid includes access to medical justice rehabilitative justice and informational justice in addition to processual justice.

3. Legal aid is to be provided not only during trial but also in the pre-trial and post-conviction stages.

4. All women in custody must be informed of their rights in
custody including their right to demand legal aid if needed.

5. Legal literacy programmes, Bandi Adalats and legal aid camps should form custodial modalities for rendering services to women in prison and other custodial centres.

6. Legal aid boards should devise and implement schemes to prevent custodial injustices, and to recommend modalities for redress and victim's compensation, as well as deterrent punishment to delinquent custodial staff.

7. Legal aid workers and para-legal workers should ensure strict compliance of the provisions of this Code and promote humane approaches among all operators of the criminal justice and correctional system.

8. Taking note of the continuing need for legal services in custodial conditions, State governments may set a regular legal aid counters in larger custodial institutions, or to serve as cluster of institutions. Such counters to be run as socio-legal cells may be managed jointly by law schools and schools of social work under supervision of Legal Aid Boards. Placement with such cells may be given accredited status as graded field work by the concerned faculties.

9. Legal aid Committees and legal aid clinics based in law colleges must be encouraged and permitted to extend legal services to women in custody.

10. There should be increased representation of women in the legal aid machinery. Legal aid workers deputed to women's institutions should be preferably women.

11. Women's organisations and activist women must have consultative status with legal aid committees.
RULES FOR SUPERINTENDENCE AND MANAGEMENT OF FEMALE PRISONERS AND CHILDREN WITH THEM IN JAILS*

SEGREGATION AND CLASSIFICATION OF WOMEN PRISONERS

Separation of female prisoners

1. All female prisoners convicted and undertrial, shall be rigidly secluded from male prisoners so as to prevent their seeing, or conversing, or holding any interaction with them. The female enclosure shall be so situated as not to be visible from any part of the male jail.

Age Classification

2. (a) Female prisoner shall be classified as follows:
   Minor : 18-20 years of age
   Adult : Above 20 years

(b) Undertrial prisoners shall be kept completely separated from convicted offenders.

(c) Habitual prisoners, prostitutes and procuresses shall be completely separated from casual offenders.

(d) Political and civil prisoners shall be kept separately from convicts and undertrials.

Notes

a. No criminal or non-criminal lunatic will be kept in prison. Those that are currently there shall be immediately transferred to appropriate mental health facilities.

b. No age group classification below 18 shall be necessary since female offenders and non-offenders apprehended under the Juvenile Justice Act, 86 shall not be admitted to adult female institutions.

c. No classification shall be allowed on grounds of socio-economic class or status of prisoners.

*This document is proposed for inclusion as a separate volume in existing jail manuals and in the model prison manual.
Restriction on female prisoners

3. (a) No female prisoner shall on any pretext, leave or be permitted to leave or be removed from the enclosures set apart for females, except for release, transfer, or attendance at court, or under the order of superintendent for any other legitimate purpose.

(b) Every female prisoner authorised to leave the female enclosure under clause (a) will ordinarily be accompanied by the matron or assistant matron, chief female warder or female warder from the time as she leaves the enclosure till she returns to it or quits the jail premises.

Exclusion of males

4. (a) No male shall enter or be permitted to enter the female ward of any jail at any time unless he has a legitimate duty to attend therein. No adult male shall enter it at all by night except in an emergency and even then only along with the female warder/female officer. He shall then enter a distinct report of his visit with the reason and hour thereof in his report book.

(b) Male warders/other male staff acting as escort to lady visitors and officials shall remain outside the enclosure.

Locks of female enclosures

5. The locks of the enclosure and barracks etc., where females are confined shall be different from those in use in other parts of the jails, so that the key of the latter may not open the former.

Photography and finger-prints

6. Legal work pertaining to photographing, measuring and foot printing etc., of women prisoner shall be done in the presence and with the assistance of women jailor or other women personnel.

Night inspection

7. Night inspection rounds shall be taken by women jailors/other women personnel if any and shall be recorded in the report book immediately on completion of the round.
Prisoners requiring mental health care

8. Female prisoners needing mental health treatment shall not be admitted in jail but kept in separate enclosures for female patient within mental health hospital or in separate mental health facilities entirely for women under the supervision of lady medical officer.

Custody of the female enclosure

9. There shall be round the clock duty of female warders in the female enclosures.

ADMISSION OF FEMALE PRISONERS

Admission to undertrial prisoners

10. The admission rules in respect of undertrial and convicted prisoners in the Jail Manual shall be applicable also to undertrial and convicted female prisoners.

Search on female prisoner on admission

11. Female prisoner shall be searched by female warders in the presence of other senior women personnel/women jailor with due regard to consideration of privacy and decency.

Quarantine on admission to jail and medical aid

12. (a) Female prisoners on admission to jail shall, be medically examined and if deemed necessary by the lady medical officer, be kept separately in female enclosure on medical ground for such period as may in her opinion, be necessary.

(b) As soon as possible after admission to jail, all female prisoners shall be required to wash themselves and their clothing thoroughly and their clothing shall be disinfected before it is stored.

(c) Part time lady doctors of the District Government Hospital shall be engaged for medical examination of female prisoner on admission and their medical care during their stay in the jails.

(d) Every women prisoner shall be examined by the lady medical officer of the prison. Such examination shall also be conducted on readmission after bail, parole and
furlough. In case the woman jailor/matron/female warder suspect pregnancy, the woman prisoner concerned shall be sent to the District Hospital for detailed examination and report.

Pregnancy

13. (a) When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady medical officer shall report the fact to the superintendent. As soon as possible arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery, etc. After ascertaining necessary particulars, a report shall be sent to I.G. Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery etc.

(b) Gynaecological examination of the female prisoner shall be performed in the District Government Hospital. Proper pre-natal and ante-natal care shall be provided to the prisoner as per medical advice.

Child birth in prison

14. (a) As far as possible, and provided she has a suitable option, arrangements for temporary release (or suspended sentence in case of minor and casual offender) will be made to enable an expectant prisoner to have her delivery outside the prison. The exceptional case constituting high security risk or equivalent grave description will not be entitled to this provision.

(b) Births in prison when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the birth register, only the address of the locality shall be registered. As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

PROPERTY OF FEMALE PRISONERS

Procedures in the case of moneys, jewellery and articles accompanying or received on behalf of female prisoners
15. All moneys, jewellery and articles of clothing received with or found on the person of a female prisoner on her admission to the jail, or sent subsequently by the police or tendered by her relatives or friends on her behalf prior to her release shall be received and taken over by the jailor or other officer on duty. A list of all such moneys and property shall be entered in the admission register and on the convicts warrant and read over to the convict in the presence of Superintendent who shall countersign the entries in the register and on the warrant. Method of disposal of prisoner’s money etc., shall be according to the general rules laid down in the Jail Manual.

Certain ornaments to be allowed to female prisoners

16. Female prisoners shall be allowed to retain in moderation certain ornaments of small value such as Mangal sutras, bangles, toe rings and nose rings. Superintendent may, however, at his discretion refuse to allow the retention of the ornaments in any particular case for disciplinary reasons.

FEMALE PRISONERS AND THEIR CHILDREN

17. (a) Female prisoners shall be allowed to keep their children with them in the jail till they attain the age of six years.

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

(c) When a female prisoner dies and leaves a child. The superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the relative be unwilling to support the child, the District Magistrate shall either place it in a approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.
(d) Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/U.T. Government shall lay down the scales.

(e) State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.

(f) Children shall be regularly examined by the lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Extra clothing, diet, etc., may also be provided on the written recommendation of the medical officer.

(g) The above facilities as well as the right to visitation will accrue to the child per se.

(h) The Prison Superintendent shall be empowered in special cases and where circumstances warrant, to admit children of women prisoners to prison without court orders provided such children are below 6 years of age.

Education and recreation for children of female prisoners

18. The children of the female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are on work in jail, the children shall be kept in creches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.

GENERAL TREATMENT AND DAILY ROUTINE

Dietary

19. (a) In jails where the population of the female prisoners is less than ten, the food cooked in the general kitchen shall be brought to the female enclosure and placed outside the enclosure gate from where it shall be taken by the female warder. For larger female inmate population, a separate kitchen shall operate.

(b) The female prisoner shall be encouraged to set and manage a kitchen garden which shall be used also for nutrition education and demonstration.

Scale of diet

20. State/U.T. Government shall lay down dietary scale for female prisoners keeping in view their calorification
requirements as per medical norms. The diet shall be in accordance with prevailing dietary preferences and pattern in the area where the prison is located.

Prisoner to receive diet according to scale

21. Every prisoner shall be entitled to receive food daily at the prescribed time according to the scale prescribed.

(b) The State/U.T. Government may at any time by order, vary either temporarily or permanently and subject to such conditions as it may think fit, the scale laid in the Jail Manual provided reasons thereof are recorded in writing by the authorities concerned.

Special extra diet on medical grounds

22. (a) Where the Lady Medical Officer, for reasons of health, considers the prescribed diet to be unsuitable or insufficient for a female prisoner or her child in jail, she may order in writing a special diet or extra diet for a specific period. Special consideration shall be given to the pregnant/nursing female prisoners.

(b) Rules relating to diet of prisoners, those on specific medical advise, expectant and nursing mothers, and infants and children, shall be scrupulously observed.

CLOTHING AND EQUIPMENT

Supply of clothing and bedding

23. State/U.T. Governments shall lay down suitable scales for clothing and bedding for female prisoners in accordance with local climatic requirement and shall fix its life for replacement.

Extra clothing to old and sick women prisoners

24. The Lady Medical officer may at any time direct on medical grounds the issue of extra clothing to any female prisoner for any specified period or during any season of the year. She may authorise the issue of extra warm clothing to prisoners who are old or infirm or whenever she thinks it necessary.

Hospital clothing and bedding

25. Female patients in mental health hospital and medical institutions shall be provided with standard clothing,
bedding and other amenities as are warranted.

Distinctive clothing for female prisoners suffering from contagious diseases.

26. Clothing and blankets supplied to female prisoners suffering from contagious diseases shall be stored separately and shall be distinctly marked.

Utensils
27. Each prisoner shall be provided with one thali, one katori and one mug.

**ACCOMMODATION, CLEANLINESS AND SANITATION**

**Accommodation**
28. (a) All accommodation provided for the use of female prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of the air, minimum floor, space lighting and ventilation, etc.

(b) In jails where dormitories are used, they shall be occupied by prisoners who are carefully selected as being suitable to associate with one another. Sleeping birth in the female barracks shall not be above a height which is beyond the comfortable reach of women prisoners.

(c) Sanitary installations in the female barracks shall be adequate with enough water facilities.

**Cleanliness of female enclosure**
29. (a) All parts of the female enclosure or prison shall be properly maintained and kept scrupulously clean at all times.

(b) No menial duties or conservancy work connected with the female enclosure shall be carried out by the female prisoners and specific staff for this purpose shall be recruited.

**Personal hygiene**
30. The hair of female prisoner shall not be cut without her consent, except on account of vermin or dirt when the
lady medical officer deems it requisite on the ground of health and cleanliness, and the hair of such female prisoner shall not be cut shorter than necessary for the purpose of health and cleanliness.

AMENITIES, LETTERS AND INTERVIEWS

Amenities

31. (a) Female prisoner shall be required to keep their persons and clothes etc. clean. They shall be supplied with combs for their hair. They shall be given washing soap, bathing soaps every week for washing and dressing their hair. The scales for issue of these items shall be fixed by the State/U.T. Government keeping in view the requirements for cleanliness. They shall also be allowed the use of a looking glass (mirror), and looking glasses shall be provided in barrack for the purpose.

(b) Each woman prisoner shall be supplied suitable cloth or guaze for sanitary purposes during menstruation. Any woman who desires to purchase sanitary napkins at her own cost, shall be permitted to do so.

Letters and interviews

32. (a) Every female prisoner shall be allowed, assisted and encouraged to write at least one letter and have two interviews with her relatives/neighbours every month during her term of imprisonment.

(b) Every female prisoner shall be allowed to receive all letters addressed to her by her relatives/acquaintances.

Facilities to newly admitted prisoners

(c). Every newly admitted female prisoner shall be allowed facilities for seeing or communicating with her relatives/friends/legal advisors, with a view to the preparation of an appeal or revision or to the procuring of bail. She shall be allowed to have interviews with, or write letters to her relatives once or twice or oftener, if the superintendent considers it necessary, to enable her to arrange for the management of her property or other family affairs.

Books

33. Every institution shall have a separate library or a reading
place for the use of female prisoners, adequately equipped with both recreational and instructional books and female prisoner shall be encouraged to make full use of it.

Religious books

34. A female prisoner shall be allowed to keep at a time upto five religious or other books with her. The restriction on the number of the books is on account of administrative convenience only (i.e. consideration of space per prisoner) and not for any other reason.

Recreational and cultural

35. Recreational, cultural and meditation, yoga or other facilities shall be provided in all institutions for the benefit of the mental and physical health of the prisoner.

VOCATIONAL TRAINING & LABOUR

Vocational training

7. As far as possible women prisoners shall be imparted training suitable to their capacities and capable of making them economically self-reliant. The choice of vocations shall be made in accordance with their marketability and profitability. Some indicative trades are tailoring, embroidery, needle craft, spinning, handloom, weaving, soap making, hosiery, cane and bamboo work, candle making, toy making, pottery, ceramics, stationery articles, local handicrafts and cottage industries, flower, gardening, preservation of fruits and vegetables, assembling jobs in the electronic and mechanical goods, bicycle repair, radio and sewing machine repair, typing, training for nursing, balsevikas, auxiliary nurse, midwives, etc.

Labour

37. (a) Female prisoners shall not be employed on repair of clothing, cleaning grain, button sewing on jail uniforms, and other meaningless activities which can not be considered an occupation.

(b) Unless medically advised not to work, all prisoners shall be engaged in the work activity in the prison for which they will be paid the market wages.
Prisoners shall be paid equitable remunerations for their work and no disparity in wages shall accrue on account of gender difference.

Prisoners shall be allowed to spend up to half of their earnings on approved articles for their own use in the jails and to send one fourth of their earning to their families. The balance of their earning will be set aside by the administration so as to constitute a saving fund to be handed over to the female prisoner on release.

MEDICAL FACILITIES

Medical facilities

38. (a) At every institution, service of qualified lady medical officer shall be available. She shall make arrangements for psychiatric service if necessary, for diagnosis and proper treatment of female prisoners. Referral facilities for specialist such as dentist, eye doctor, etc. will also be provided when necessary.

(b) The medical officer shall examine the sick female prisoners, and she shall inform the superintendent whenever she considers that a prisoner's physical or mental health requires specialized or special care and treatment.

(c) Female prisoners suffering from contagious diseases shall be kept separate and transferred to the appropriate medical care centres.

LEGAL AID COUNSELLING AND RESTORATIVE MEASURES

Legal aid

39. (a) Assistance of female members of the district legal aid committee shall be made available to female prisoners to help solve their procedural and legal problems.

Socio-legal counselling

(b) Socio-legal counselling cell shall be set up in each institution to be managed by a desiganted law school, school of social work, or a non-governmental voluntary agency. Work in the cell shall be accredited and form a part of the students’ graded curriculum.

(c) The practice of fortnightly or weekly nari bandi sabhas (women prisoner’s councils) shall be utilized as a
modality for orientation of and interaction with prisoners and for training in the participative custodial life.

FACILITIES FOR FOREIGN NATIONALS

Facilities for foreign nationals

40. Female prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with their diplomatic and consular representatives. Those who are nationals of other states or refugees shall be allowed similar facilities to communicate with any agency whose task is to protect such persons.

EDUCATION

Education

41. Non-formal education shall be compulsory for all prisoners. It shall aim to enhance their functional capability. The non-formal education programme will focus on legal and human rights, health and family welfare, and socio-economic status of women and skill training for making women self-reliant. For interested prisoners, appropriate facilities for formal and advance education shall be provided.

PREMATURE RELEASE AND TRANSFER

Premature release

42. Special consideration shall be given to the premature release of female prisoners in such cases where she has been the sole breadwinner or where no surrogate care is possible for older dependent children of women prisoners. Release on suspended sentence or otherwise of expectant mother shall be ensured, as far as possible to avoid delivery in jail.

Probation of Offenders Act, 1958

43. Probation of Offenders Act 1958 shall be extensively used in case of women offenders to provide suitable non-institutional corrective treatment to women prisoners.

Transfer of women convicts to women prisons

44. Women prisoners sentenced for three* months or more

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*This provision is based on current sentencing policies. The Committee's recommendation is to avoid sentences of below six months duration altogether, and to rely on non-custodial sentencing options.
shall be transferred to a women’s prison to facilitate their rehabilitation. Setting up such a prison shall be mandatory for every state.

Transfer of female convicts for release

45. Every female confined in a jail other than that of the district of her residence, shall be transferred to the jail of the district to which she belongs so that she may arrive their ten days before her release. The sanction of Inspector General of Prisons for such transfers within the state shall not be required.

Release of female prisoner

46. Before a female prisoner is released, sufficient advance notice shall be given to her relatives or friends to enable them to be present at the jail and receive her. If no relative appears on the day of her release, she shall be sent to her home under the charge of an adequate female escort.

Arrangements for release to be recorded in the report book

47. The female deputy jailor/female jailor shall note in her report book the arrangement made for the safe conduct to the home of female prisoner.

SOCIAL RELATIONS AND AFTER-CARE

State Aftercare Home for Women

48. (a) Female prisoners who are homeless/rejected by families or desirous of undergoing higher education and training shall be admitted in After-Care Homes for Women run by the State Social Welfare Department. Released Prisoners Aid Society and women’s assistance groups shall be closely consulted and utilized for habilitating prisoners. The released prisoner shall also have access to existing socio-economic government schemes for assistance to women.

Social relations

(b) Special attention shall be paid to the maintenance and improvement of relations between a female prisoner and her family during the time of her imprisonment, to facilitate proper resocialization after release.
(c) During the pre-release period necessary contact shall be maintained with her relatives, services and agencies, governmental or otherwise to ensure rehabilitative assistance in post-release period.

All the provisions mentioned under 48 shall be executed with the close collaboration and guidance of socio-legal counselling cell mentioned under 40.

INSANE AND MENTALLY ILL FEMALE PRISONERS

Lunatics

49. Women who are found insane and mentally ill shall not be detained in prison and expeditious arrangements for those who are earlier admitted shall be made to remove them to mental homes/institutions.

50. When transferring a female lunatic prisoner to a mental home and back to the prison, a female warder shall convict accompany the police escort provided to prisoner wherever possible, the families of such prisoners shall be traced and informed of the prisoners’ whereabouts and health status.

After care of insane and mentally abnormal

51. Steps shall be taken, by arrangement with the appropriate agencies, to ensure, if necessary, the continuation of psychiatric treatment after release and provisions of social psychiatric after-care.

DISCIPLINE, PUNISHMENT, REQUESTS AND COMPLAINTS

Bar to fetters

52. No female prisoner shall be liable as a punishment to any form of handcuffs, fetter or corporal punishment and whipping. Female prisoners shall not be required to wear fetter or cross bars on transfer.

Discipline and punishment

53. (a) Discipline and order shall be maintained with firmness but with no more restriction than is necessary for safe custody and well ordered community life.
(b) No female prisoner shall be punished in the jail unless she has been informed of the offence alleged against her and given a proper opportunity of presenting her defence. The competent authority shall conduct a thorough investigation of the case before awarding punishment.

Requests and complaints

54. (a) On weekly parades, every female prisoner shall have opportunity of making requests/complaints to the superintendent which shall be promptly dealt with.

(b) A complaint box shall be fixed at a prominent place in the female enclosure which shall be opened in the presence of the District Magistrate at least once a month and every such complaint or request found in the complaint box shall be registered and properly dealt with and replied to without undue delay. The prison social welfare and legal aid counselling staff or literate prisoners shall be utilized as scribes to assist illiterate prisoners in recording their complaints. All such complaints shall be received and tackled in an understanding manner without risk of retribution to the complainant.

FEMALE PERSONNEL

Charge of female enclosure

55. The female enclosure attached to the Sub-Jails/District Jail shall be in the charge of a matron/lady deputy jailor assisted by female head warder and female warders. In every Central Jail a lady jailor shall be incharge of the female enclosure. They shall work under the orders of Superintendent. In separate jails for women, the female superintendent will be fully autonomous. In every jail in which female prisoners are confined there shall be such number of officers of such class as the State/U.T Government may direct.

Staff

56. In every jail for convicted women prisoners there shall be one post of Lady Superintendent, Lady Jailor, Female Clerks, Female Teachers and Instructors, Chief Female Warder, Female Head Warders and Female Warders as
per requirement, accordance to the direction of the State/U.T. Government. In addition, as relevant, consultative services of female psychiatrist, female doctor, legal aid and social counsellors, as well as probation and after-care officers will be available and utilized for the care and habilitation of prisoners.

Lady D.I.G at the headquarters

57. There shall be one post of Lady D.I.G. attached to the Prison Department's Headquarters to look after women prisons, women prison staff and women prisoners. Enquiries pertaining to women prisoners shall be conducted by the Lady D.I.G. who shall submit her finding to the Inspector General with her recommendations for his orders. Provided she meets the merit criteria, there shall be appropriate promotion opportunity for the lady D.I.G.

Report book register and stores

58. Every female personnel in-charge of the women enclosure/separate jail shall keep a report book, in which she shall record all occurrences of importance. She shall also maintain all work registers relating to female prisoners and be responsible for the safe custody of stores and materials in her charge.

Distribution of food

59. The matron/female warder shall carefully supervise the distribution of food to female prisoners and see that prisoners receive properly cooked food prescribed under rules. She shall report to the Superintendent/Jailor/Lady Deputy Jailor any instance in which the food is bad, or badly cooked or is short in quantity.

Duties of matron/female chief warder/female Head warder/-female warder

60. Matron/female chief warder/female Head warder/female warder shall perform various routine duties in regard to female prisoners as prescribed for male warders in relation to male prisoners.
Escorting of female prisoners

61. The matron/female warder shall escort every female prisoner leaving the female enclosure, and shall remain with the prisoner until the prisoner returns to the enclosure and quits the jail premises. She shall accompany the female prisoner under transfer. Wherever necessary, female home-guards or other authorized women will be utilized for escort duty with due regard to security considerations.

Search of female prisoners

62. The matron/female warder shall conduct the search of female prisoners. Such search shall not be conducted in the presence of any male person.

Matron of female warder not to allow a male to enter female enclosure

63. (a) The matron or female warder shall not allow any male jail officer or male prisoner to enter the female enclosure without proper authority. If any male jail officer/warder/prisoner without proper authority at any time enters or attempts to enter any ward or portion of the jail reserved for occupation by female prisoners she shall make a report to the Deputy Jailor/Jailor/Superintendent forthwith.

Matron or female warder not to communicate with male prisoner

64. No matron/female warder shall at any time on any pretext hold any interviews, communicate or interact in any way with any male prisoner or visit any part of the jail allotted, reserved for, or occupied by any male prisoner, except in the discharge of her duties.

Keys of female enclosure

65. The matron or the female warder shall have custody of the keys of the wards and enclosures in which female prisoners are confined during the day. After the locking up, she shall deliver the keys to the Lady Deputy Jailor/Jailor who shall lock them up in the key chest. The
Lady Dy. Jailor/Jailor shall hand over the keys again to the matron or female warder in the morning at unlocking.

Terms of service and training

66. (a) The practice of female convict warders will be discontinued and funds authorized for engaging required number of paid warders.

(b) The terms of service of warders and of all other female jail staff shall be regularized in terms of recruitment, confirmation, placement, promotion, training, refresher training, and retirement. Pre-service and in-service training and sensitization appropriate to their duties and functional roles shall be provided to the female staff.

Qualifications of female warders

67. Female warders/female warder instructors shall have the following or other qualifications deemed to their functions:

(a) Educational qualification: High school with Home Science

(b) Diploma in tailoring/other arts from recognised institutions viz. I.T.I. or Bal Sevika/adult literacy or training from any Social Welfare Training Centre or Adult Literacy Training Centre.

Duty hours

68. Female staff shall not be placed on duty for more than 8 hours a day in four hourly shifts. Night matrons shall be provided in all prisons. The arrangement of locking women prisoners overnight from outside shall cease.

Creche and canteen services to staff

69. Female staff shall be provided services of creche to leave their young children there for proper care while on duty. They shall also be allowed the option to take their meals during duty hours with prisoners at no cost to them.
Duties of Prisoners

70. The prisoners shall have the duty to conduct themselves in accordance with jail regulations and in support of the reform and habilitative objectives of imprisonizaton. They shall pay due heed to the rules and procedures laid down in the Jail Manual.
EPILOGUE

A radical step forward in substance and in quality is the dream of every study group. The present Committee is no exception. Gender justice is enshrined in our Constitution. Gender dignity is the inherited promise of an enlightened society. The Committee and its report are a small measure of the recognition of the need to assure both dignity and justice to the custodialized women in India.

The violation of woman's rights or her person begins outside custody and often before she tastes deviance. The situation in custody becomes usually an extension of her experience and standing outside. The indignities she may then go through are not sanctioned in law nor in the Constitution. Yet, the praxis of custody is callous and hostile. It neglects the women or her special needs, treats her as a negligible minority, fears no threat or intimidation of indiscipline or violence in custody from her, and uses the perverse argument of her meagre numbers in custody to stall or oppose any active reform of her custodial situation.

To accept this report as a document of any worth at all, the principals in government and elsewhere must cease to be victim of the numbers approach. Because they are fewer they can be tackled with speed and alacrity and with minor additional costs which is always a weighty consideration in reform endeavours in the country. Improving the custodial lot of women can also have an enzymatic effect. Although small in numbers, the women population in custody can be the 'trojan horse' of prison reform. What is tried with demonstrable success for women will serve as incontrovertible evidence of what can be done for men. Acceptance of the recommendations of the present Committee will pledge the state freely to try out and test, and only in the light of the evidence of experience, to expand the scope of reform to embrace the custodialized population as a whole.

Just as to its children, a nation owes to its women the best it has to give. So that the generations to come may benefit from a reformed woman, the State and the society in India must join hands in the task of reducing custodial excesses and injustices to women.

In any call for reform, the objectives must be clear. Peter Drucker speaks of the twin concerns plaguing those in search
of organisational success and efficacy: (i) how to judge performance against an objective; and (ii) how to create accountability for it. Finding a basis to answer these questions is the essence of successful management. As a proposition, this is just as valid for custodial institution or a criminal justice and correctional system as it is for a corporation.

In India, the objectives may be, and often are, glorious and clear. But usually there is a poor basis to measure performance against stated objectives or to fix accountability. In the custodial context particularly, these two factors can only lead to a dictatorial culture, and to misguided unaccountability.

In that setting, the woman because she is conventionally less literate, less violent, less demanding and less numerous, strays toward greater neglect and injustice. Every woman who is thus set aside from custodial and processual justice is an affront to our Constitution and a challenge to the sanctity of equality.

The recommendations of this group, are in tune with the tide of change that is encompassing Indian women in every respect in every walk of life. Since 1975, the watershed year in which India joined other countries of the world to celebrate womanhood, much has happened by way of programmes and activities to further the cause and status of women. Laws relating to women are being reviewed, crimes perpetrated on them are being understood and are beginning to be tackled, arrangements are underway to give legal aid to women, her medical and employment rights are being recognized, and programmes for upgrading her socio-economic and legal status have begun.

In more than one sense, this is a captive moment to ask for and secure to women in custody what is their constitutional and human entitlement. The present Committee can do no more than to press for a fair consideration of its clarion call to mainstream those who have been callously left outside the due process of custodial care and correctional justice.
AFTERWORD
by
Chaiman

We have argued, in this lengthy Report, for a radical and humanist technology of custodial justice for the handicapped gender. But arguments win only if intelligence is able to silence ignorance, convince orthodoxy and neutralise masculine prejudice unconsciously dominating penological thinking. Gender Justice in custodial praxis cannot be isolated from the general status of women in Indian life. No narrow perception of her lot in lock-ups, jail cells and the like without a larger vision of the whole spectrum will help a correct diagnosis of the maladies in custody. So it is that we plead for preventive medicine whereby the scenario of juvenile neglect, marital cruelty, destitution, divorce, vagrancy, life in vice and other criminal alternatives for survival may be obviated and the dignity and worth of her personhood may be defended against social pressures. For similar reasons, we emphasise that women, branded criminal and sentenced to prison terms of punitive travail, become hardened animals and when released, relapse to anti-social cycle of vice, back to jail and repeat performance. It is of critical importance that on emerging from incarceration she is prepared and trained to live in honour and aftercare procedures provided. Even while serving her sentence or term in any custodial campus she must be readied through restorative strategies, to meet the challenges of a relentless world. The pre-prison, in-prison and post-prison processes vis-a-vis the vulnerable sex are an integral whole and must curatively respond to the pathological problems women face. The Committee has used this perspectival lens.

In making specific proposals for change any radical group of pragmatic reformers must—so have we—remember the Achilles' heel of welfare schemes - the frustration of the finest project at the level of actual accrual of benefits, stultification of plans at the action stage being the rule, progressive people are sceptical about social justice baloney; and conservatives, on the other hand, dismiss new-fangled therapeutic software for women sentencees as mawkish ideological indulgence while deterrent hardware is the desert of delinquents, men or women. Our Committee has unhesitatingly rejected the
retributive and harshly punitive alternative and decisively opted for correctional humanism as holding out the best habilitative prospect. Are we too critical or radical, too innovative or expansively experimental for the relatively limited female members behind bars or walls? We must go ahead whatever the cost because that budget is bogus and that economy phoney which discounts woman's worth and consciously continues the tortures of the past and discountenances the culture of the future because it is cheaper to be cruel than to be kind. What counterfeit arithmetic that adopts the soulless calculus of de-valuing the bill of rights, because the humane numbers are not noisily numerous?

"The voice of the intelligence is soft and weak, said Freud. It is drowned out by the roar of fear. It is ignored by the voice of desire. It is contradicted by the voice of shame. It is hissed away by hate, and extinguished by anger. Most of all it is silenced by ignorance."

[KARL MENNINGER: The Progressive, October, 1955]
OPINION

Querist: National Expert Committee on Women Prisoners

I have perused the notification of the Government of India, Ministry of Human Resource Development, Department of Women's Welfare, dated 26.5.1986 constituting an Expert Committee at the national level. My opinion is sought on the constitutionality or otherwise of a Central Legislation to give effect to the recommendations of the Committee dealing with the matters referred to in the notification are:

(1) to study the procedures for the handling of women offenders in detention or custody;

(2) to review conditions governing the treatment of women offenders in police lock-ups and penal and correctional institutions;

(3) to examine the efficacy of institutional and other services for reformation and rehabilitation of women offenders;

(4) to suggest legal, administrative and organisational measures for ensuring a fair/humane and effective handling of women offenders at various stages of the criminal process; and

(5) to go into any other aspect relevant to women offenders within the overall framework of the present policy of women's development.

2. On a consideration of the above, I feel that the pith and substance of any legislation will fall under entry 4 of List II. The legislation will, therefore, be exclusively one falling within the powers of the State legislature under Article 246 (3) of the Constitution of India read with entry 4 of List II. The only recourse seems to be to resort to Article 252 of the Constitution. Under the said Article, if it appears to the Legislature of the two or more States to be desirable that any of the matter with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and any
Act so passed shall apply to such States and to any other State,
by which it is adopted afterwards by resolution passed in
behalf by the House or where there are two Houses, by each of
the Houses of Legislature of that State. This provision can be
resorted to only with regard to those States which by resolution
passed to that effect agree to such parliamentary legislation
being made applicable to the States. Such legislation can not
be made applicable to States which do not so pass a resolution
to that effect. The appropriate course therefore is to persuade
the State Legislature to pass resolutions as provided for in
Article 252 of the Constitution so that a uniform law can be
made by Parliament. Otherwise the recommendations of the
Committee can be implemented only by legislations made by
State Legislatures.

Sd/-K. PARASARAN
Attorney General for India

New Delhi,
May, 12, 1987