CHAPTER 2

HUMAN RIGHTS LAW --- DISCUSSION ON WOMEN PROTECTION WITH SPECIAL REFERENCE TO INTERNATIONAL LAW.

In medieval period, people were living under the shadow of duty, whereas today’s people live under the umbrella of rights which we usually call Human Rights. This awareness about rights is a new chapter in the story of individual’s freedom. Today’s parameters for civilization and culture of any nation are neither actually its strong economy nor its sovereign power; rather we identify its civilization and culture by the fact that whether rights of individuals are gaining respect there or not. Till present era we cannot say that we have cleared the eclipse on human rights movement which occurred due to world politics of America and Middle Europe during cold war. In spite of such obstacles the awareness of human rights is spreading. The philosophy of human rights is taking such shape which compels us to think that human rights are an urgent need for each individual. Human rights are those minimal rights that every individual must have by virtue of his being a member of human family irrespective of any consideration. According to western political and philosophical thoughts, human rights are inmate in individual and are an intrinsic factor in the ‘quality of human persons’. To quote the words of President Jefferson, “human rights are inherent and inalienable rights of man”, and hence a state that violates them in its laws and its actions, breaches one of the very pre-requisites of civil co-existence among status and may be legitimately brought to account.

Individual’s rights and duties take birth in a society. We ‘individuals’ live in a group. Without these individuals we cannot imagine a society. A society in itself has no blood, flesh, sense and feeling. Whatever it has, this is due to its individual; so individual is the prime concern of society. Now if we will concentrate on these individuals of society, we find that these include two different sexes or genders.
Whatever is happening in society that is affecting these two groups of society, better to say ‘male’ and ‘female’ class of society. When equally contributing in the development of society, why discrimination in enjoyment of their rights in the same society? Not only in their normal social lives but also even in such place where they actually become equal in almost all respect, we can identify the discrimination between men and women. Prison is such a place where both men and women are prisoners only either under trial or convicted.

Now the question arises that what type of discrimination? Who is discriminating? Police as well as human society both are violating human rights of women prisoners. It is though very peculiar but universally accepted fact that, if human rights are natural rights or fundamental rights or what we generally call as inseparable rights for the dignity of individual human being then women prisoners do possess these rights, with their counterpart male prisoners. Plight of women prisoners is not only a national issue for today, but it gets an equal importance in international world.

In society women are condemned for their anti-social and unlawful activities by means of penal institutions. The prominent penal institution in the 19th century has been the prison and the system is so popular that it still holds good. Towards the middle of the sixteenth century, a period of “experiment with imprisonment” as a form of punishment for certain types of offenders specially for juveniles, truly beggars, vagabonds and prostitutes was initiated in Britain. In the year 1557 the first jail was established in London as “Bride Well”. The experimentation of prison system in the 16th century in most of the European countries resulted in social reactions due to the reasons of the brutal treatment of prisoners and barbarous nature of punishment. These experiments lasted till the eighteenth century and imprisonment was accepted universally as a substitute for most of the corporal and capital penalties. At that time prison were damp and vermin inflicted and were the places full of filth, corruption, sex indulgences and all sorts of vices. After that a number of jails and reformatories were established in

1. Encyclopedia of social and crimes, p. 57
various countries of the world. The reformation in the British Prison system started with
the appointment of the "Glad Stone Committee" for searching enquiry into the main
features of prison life. The report of this committee pointed out that little stress has been
laid upon the reformation of the prisoners subject to the prison confinement. The
Committee recommended:-

(i) That the prisoners should not be merely taken as condemned prisoners but the
systems should be so designed as to be capable of being adopted to the
special class of individual prisoner, and

(ii) That the principle that prisoner should endure to hard labour, hard fare and
hard bed, "are no more useful and rather outdated concepts".

All these recommendations of this Committee Report were accepted by
Home Secretary as a fresh basis of prison administration. Later on, it was enacted as
'Prison Act, 1894'—which forms the legal basis of prison system in England. In spite of
all these recommendations almost in all nations all these terms like 'hard labour', 'hard
fare' and 'hard bed' are in practice for women prisoners. With this term 'hard' for them
the whole society is hard for them which makes their lives hard. But law which has a
capacity to control all abnormal situations and which promised justice to individual
irrespective of every consideration is trying hard for the protection of human rights of
women prisoners. An analysis of international law in relation to the protection of human
rights of women, specifically women prisoners is highly needed. In this connection, an in
depth discussion on different laws internationally can throw light relating to women
prisoners.

2.1. INTERNATIONAL LAW

Law is a tool to regulate the inter-actions amongst the members of a
society. Thus, international law is a system composed solely of legal and principle
binding upon civilized nations only in their mutual relations. According to Oppenheim,

“Law of Nations, or International law is the name for the body of customary and conventional rules which are considered binding by civilized status in their intercourse with each other.” Brierly says, Law of Nations or International law may be defined as a body of rules and principles of actions which one is binding upon the civilized states in their relation with one another. Municipal Law is those clusters of laws, rules, and regulations etc., which are necessary for managing the different affairs within a nation.

2.1.1. Relation between International Law and Municipal Law:

There are two principles on the relationship of national and international law—Monism and dualism. The theory of Monism regards that both international law and municipal law have a common underlying legal basis and it derives its origin from the law of nature, which binds equally the state and individuals. According to state law and international law, both ultimately regulate the conduct of individuals, one medially and others immediately, though in the sphere of international law the consequences of such conduct are attributed to State. Kelsen was the chief protagonist while his supporters were Falzmaurice, Fitzmaurice and Stark.

2.1.2. Theories on the application of International Law with Municipal Law:

Two theories were expanded for this purpose, viz.

1. Transformation or Specific Adoption Theory;
2. Delegation Theory.

According to Transformation Theory or Specific adoption theory, the rules of international law cannot impinge upon State law unless they undergo the process of transformation and be specifically adopted by, or incorporated into the State law, thus being no automatic application as such. Rules of International law can be applied in the

7. Fitzmaurice considers that Anzilotti has been wrongly labeled as dualist. See G. Fitzmaurice, The General Principles of international law Considered from the standpoint of rule of law, 92, Hauge Rieuci, 70-80, (1957-11)
field of municipal law only through a process of specific adoption by a specific incorporation into municipal law through its constitutional machinery. But in Delegation Theory it is said that there is no transformation of a rule of international law when it is adopted by the legislative machinery of the State. The application of rules of international law to the municipal sphere is a continuation of one single process which starts with the creation and acceptance of international law or rule by the States. The constitutional rules on international law delegate to each State's Constitution, the right to determine the procedure and manner to make treaties effective at the municipal level.

2.2 UNITED NATIONS:

For the advancement of women UN actions began with the signing of the UN’s founding charter. In its Preamble, the members of the UN declared their faith “in fundamental human rights in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small....” This happened more than 50 years ago, in October 1945, when the Charter entered into force and the UN was formally set up. Since then the UN has been the centre of a growing global movement for “Women’s Rights”. By adopting international laws and treaties on women’s rights, UN has helped to set a common standard for measuring how societies would advance towards the equality between men and women.

2.2.1. The Commission on the Status of Women:

The Commission on the Status of Women (CSW) is one of the first bodies established by the Economic and Social Council. Set up in 1946, it monitors the situation of women and promoted their rights in all societies around the world. It prepares recommendations and reports for the UN on any issue affecting women. In case of urgent problems, the commission can press for immediate international action to prevent or alleviate violations of women's rights. Its work with regard to violence against women led to the adoption of the Declaration on the Elimination of Violence Against women by the General Assembly in 1993.
2.2.2. Universal Declaration of Human Rights, 1948:

**Article 2** - Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...

**Article 3** - Everyone has the right to life, liberty and security of person.

**Article 4** - No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms.

**Article 5** - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6** - Everyone has the right to recognition everywhere as a person before law.

**Article 7** - All are equal before the law and are entitled without any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 9** - No one shall be subject to arbitrary arrest, detention or exile.

**Article 11** -

1. Everyone charged with a penal offence has right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than one that was applicable at the time the penal offence was committed.

**Article 23(2)** - Everyone without any discrimination has the right to equal pay for equal work.

**Article 25** -

1. Everyone has the right to a standard of living adequate for the wealth and well being of himself and of his family, including food, clothing, housing and medical care and necessary social service and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same protection.

**Article 29(2)** – In the exercise of his rights and freedoms, **everyone** shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and freedoms of other and of meeting the just recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in democratic society.

The underlined words such as everyone, no one and person etc. indicate that prisoners are also person in first instance and then prisoners, so all those rights should be claimed by prisoners irrespective of sex.

**2.2.3. International Covenant on Civil and Political Rights, 1966:**

The International Covenant on Civil and Political Rights, 1966 comprises of 53 Articles divided into VI parts. Few relevant provisions under the various parts are as follows.

**Part II**

**Article 2**-

1. Each State party to the present Covenant undertakes to respect and to ensure to all individual within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind, such as, race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.

2. Where not already provided for by existing legislative or other measures, each State party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional process and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the right recognized in the present Covenant.

3. Each State party to the present Covenant undertakes:
(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such remedy shall have his right thereto, determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

Part III

Article 6- Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8-
1. No one shall be held in slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
   (b) Paragraph 3(a) shall not be held to be preclude, in country where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment lay a competent Court.
   (c) For the purpose of this paragraph the term forced or compulsory labour shall not include.
Any work or service not referred to in sub-paragraph (b) normally required of a person, who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention.

Article 9-

1. Everyone has the right of liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed at the time of arrest, of the reasons for his arrest and shall promptly be informed of any changes against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that the person awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without any delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10-

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

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

(b) Accused juvenile persons shall be separated from adults and brought speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

**Article 14-**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or where the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interest of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

   (c) To be tried without undue delay;

   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this rights; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses as against him;

(f) To have free assistance of an interpreter if he cannot understand or speak the language used in the court;

(g) not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

2.2.4. International Convention on the Elimination of all Forms of Racial Discrimination, 1966

Article 1(4)- Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals requiring such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

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Article 2(1) (a)- Each State party undertakes to engage in no act or practice of racial discrimination against persons, group of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any person or organizations.


Article 3— Every person has the right to recognition as a person before the law.

Article 4—
1. Every person has the right to have his life respected. This right shall be protected by law, and in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In the countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgement rendered by a competent Court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be re-established in States that have abolished it.
4. In no case shall capital punishment be inflicted for political offences or related common crimes.
5. Capital punishment shall not be imposed upon persons, who are at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.
Article 5 ---

1. Every person has the right to have his physical, mental and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

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

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily, so that they may be treated in accordance with their status as minors.

6. Punishment consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

Article 7 (3) - No one shall be subject to arbitrary arrest or imprisonment.

(4) Anyone, who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

(5) Any person detained shall be brought promptly before a Judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

(6) Anyone, who is deprived of his liberty, shall be entitled to recourse to a competent Court, in order that the Court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In State parties whose laws provide that anyone, who believes himself to be threatened with deprivation of liberty is entitled to recourse to a competent Court in order to that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
(7) No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non-fulfillment of duties of support.

**Article 8 (2)** --- Every person accused of a criminal offence has the right to be presumed innocent so long as his guilt has not been proved according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

(a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or Court;

(b) adequate notification in detail to the accused of the charges against him;

(c) adequate time and means for the preparation of his defence;

(d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

(e) the inalienable right to be assisted by counsel provided by the State, paid or not as the domestic laws provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

(f) the right of the defence to examine witnesses present in the court and to obtain the appearance, as witness, of experts, of experts or other persons who may throw light on the facts;

(g) the right not to be compelled to be witness against himself or to plead guilty;

(h) the right to appeal the judgement to a higher Court.

**Article 9** — No one shall be convicted of any act or omission that did not constitute a criminal offence, under the applicable law, at the time it was committed. A Heavier penalty shall not be imposed than the one that was applicable at the time the criminal offence was committed. If subsequent to the commission of the offence the law provides for the imposition of a lighter punishment, the guilty persons shall benefit therefrom.
Article 10—Every person has the right to be compensated in accordance with the law in the event he ahs been sentenced by a final judgement through a miscarriage of justice.

Article 11—
1. Everyone has the right to have his honour respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honour or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

Article 12---
1. Everyone has the right to freedom of conscience and of the religion. This includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest religion and beliefs may be subject only to the limitation prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

2.3. AFRICAN CHARTER ON HUMAN RIGHTS AND PEOPLE RIGHTS, 1981

Article 3---
1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.
Article 4 --- Human Rights are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5 --- Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6 --- Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 9 ---
1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinion within the law.

Article 15 --- Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.

Article 16 ---
1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. State parties to the present Chapter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 18 (3) --- The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women and the child as stipulated in international declarations and conventions.
2.4. PRINCIPLES OF MEDICAL ETHICS, 1982:

The principles of Medical Ethics have been relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The role of health personnel, particularly physicians, was recognized by the international community in protection of prisoners against torture and other cruel, inhuman and degrading treatment or punishment. The United Nations Assembly on 18th December 1982 adopted the following principles for the role of Health Personnel:

**Principle No. 1**—Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

**Principle 2** — It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading punishment.

**Principle 3** — It is a contravention of medical ethic for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

**Principle 4** — It is a contravention of medical ethic for health personnel, particularly physicians;

(a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical and mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments.

(b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant
international instruments, or to participate in any way in the infliction of any such
treatment or punishment which is not in accordance with the relevant international
instruments.

Principle 5 – It is a contravention of medical ethic for health personnel, particularly
physicians, to participate in any procedure for restraining a prisoner or detainee unless
such procedure is determined in accordance with purely medical criteria as being
necessary for the protection of the physical or mental health or the safety of the prisoner
or detainee himself, of his fellow prisoners or detainees, or of his guardians and presents
no hazard to his physical and mental health.

Principle 6 --- There may be no derogation from the foregoing principles on any ground
whatsoever, including public emergency.

2.5. TOKYO RULES:

The Tokyo Rules 8 provide a set of basic principles to promote the use of
non-custodial measures, as well as minimum safeguards for persons subject to
alternatives to imprisonment. Pre-trial detention shall be used as a last resort in criminal
proceedings, with due regard for the investigation of the alleged offence and for the
protection of society and the victim. Alternatives to pre-trial detention shall be employed
at as early a stage as possible. Pre-trial detention shall last not longer than necessary.

The judicial authority, having at its disposal a range of non-custodial
measures should take into consideration in making its decision the rehabilitative needs of
the offender, the protection of society and the interests of the victim, who should be
consulted wherever appropriate. Sentencing authorities may dispose of cases in the
following ways:-

a) Verbal sanctions, such as admonition, reprimand and warning;
b) Conditional discharge;
c) Status penalties;
d) Economic sanctions and monetary penalties, such as fines and day-fines;
e) Confiscation or an expropriation order;

f) Restitution to the victim or a compensation order;
g) Suspended or deferred sentence;
h) Probation and judicial supervision;
i) A community service order;
j) Referral to an attendance centre;
k) House arrest;
l) Any other mode of non-institutional treatment;
m) Some combination of the measures listed above.

The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society. Post-sentencing disposition may include: the decision on post sentencing disposition, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.9

2.6. LEGISLATIVE DEVELOPMENTS AROUND THE GLOBE:

2.6.1. England:

The Royal Commission suggested certain restrictions on the power of arrest on the basis of the ‘necessity principle’. The Royal Commission said: We recommend that detention upon arrest for an offence should continue only on one or more of the following criteria:-

(a) the person’s unwillingness to identify himself so that a summons may be served upon him;
(b) the need to prevent the continuation or repetition of that offence;
(c) the need to protect the arrested person himself or other persons or property;

(d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

(e) the likelihood of the person failing to appear at court to answer any charge made against him.

The Royal Commission also suggested:-

"To help reduce the use of arrest we would also propose the introduction of a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the police station without resorting to arrest provided a power to arrest exists, for example to be fingerprinted or to participate in an identification parade. It could also be extended to the attendance for interview at a time convenient both to the suspect and to the police officer investigating the case."

2.6.2. U.S.A.

In U.S.A. courts have been receptive to the claims of women prisoners that their conditions of confinement should be equal to that of their male counterparts. Thus markedly unfair conditions in women's prisons in comparison to men's prisons have been held to violate the equal protection clause of the Fourteenth Amendment. In the case of Cauterino v. Wildson, the court held that the officials of the Kentucky Department of Correction unconstitutionally discriminated against the inmates of Kentucky's only prison for women. Among the equal protection violations found were inferior programmes, training, vocational education when compared to those available to similarly situated inmates at the State male correctional institutions. Similarly, health care needs of female prisoners must comport with the American Supreme Court decision in 'Estella v. Gamble'. This decision lays down that the prison officials are in violation of Eighth Amendment principle against unnecessary infliction of pain when they show a deliberate indifference to the serious medical needs of the prisoners.

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

2.6.3. Pakistan

For obtaining confessions, torture in police custody has become the norm rather than an exception. Sometimes relatives of suspects are detained in police custody to force them disclose the whereabouts of suspects or accused.

"Seventy to eighty percent of women in jails were in for Hudood offences. (The Hudood ordinance promulgated during the regime of Zia-Ul-Haque lays down that if a victim of rape fails to prove her innocence, she is guilty of adultery). In some cases that went before the courts, the judge had to rule that the Hudood change had been wrongfully made."

The Hudood ordinance came handy for taking women into custody and the requirement that a close examination of women should only be made by women and that arrested women should be transferred to judicial custody was customarily ignored.

2.6.4. Bangladesh

"There are cases in which persons are arrested at random without warrants in contravention of Section 54 of the Criminal Procedure Code. This section, although innocent in appearance, has given the police power to detain whom they will."

"There are reports that the police in its endeavour to complete a case successfully often exert pressure on the detainee with the result that the accused either
suffers serious injury or expires due to heart failure". Autopsies when carried out, if the state of the body so permits, often tells a different story. At a time when several human rights activists all over the world are striving to uphold human dignity at home, at work, in prison and elsewhere, prisoners of all categories continue to suffer horribly, particularly in the third world. Bangladesh is no exception. Little is known about prison condition and the treatment of prisoners in Bangladesh and little has been done to ameliorate the conditions which, thanks to the efforts of non-governmental organizations, have been brought to light.”

“While our socio-cultural system is distinctly unfriendly towards women, the male-dominated police force is affected by gender bias in its attitude towards the women victim is poor, helpless and illiterate. Most police stations do not have female constable or officers, so that women usually find themselves at the mercy of male officers and constables. The power of the police is often beyond control by law or authority and become even more unaccountable since the state itself depends on these police powers and conditions their misuse.”

The nature of international law in respect of protection of human rights of women prisoners is protective and reasonable. In spite of all these laws at the international level till now, the conditions of women prisoners are not improved as it should be. In different parts of the world the problems of human rights of women prisoners are quite different. The problem of human rights in the countries of Asia and Africa are quite different from that in the West. In Western countries, the role of human rights is to fine-tune the administrative and judicial system and fortify rights and freedom that are largely uncontroversial. In countries of Asia and Africa on the other hand, human rights have a transformative potential.

In spite of all these laws for protection of human rights of women prisoners, guarantees for the protection of their human rights are merely a pious promise. All these laws are not satisfying the hungry and impoverished millions of human beings. Widespread mal-administration practices among the masses in developing countries are a
great cause of denial of human rights. Mismanagement and maladministration gave birth to a motive to not implement the effective law or to implement the law in non-effective manner. This destroys human dignity and without human dignity there can be no human rights or the capacity to fight against the denial of human rights.