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# Women Prisoners and Child Birth in Prison

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MANSI GUPTA<sup>1</sup> AND VAISHALI GAURHA<sup>2</sup>

## ABSTRACT

*Prisoners of a nation are the most neglected citizen in terms of almost everything from basic amenities to basic human rights. And it becomes even more difficult for those prisoners who are expecting a child during their custody. Anyhow, women prisoners have some different needs that cannot be fulfilled in the normal prisons and with the prison system of India which deals with cumbersome problems like dilapidated infrastructure, over-crowded cells, uneatable food etc., the situation becomes more dangerous and labor some for a pregnant prisoner or her infant.*

*Every year the number of female prisoners is growing at a faster rates than men. There are around 18,000 female prisoners in India in 2015, which is at its all-time high. And in this situation, over correctional system is not able to provide even separate cells for male and female prisoners in every district, let alone other amenities.*

*In this paper, a comparative study has been done by the authors about the correctional systems of India and US. The paper highlights the different problems faced by pregnant women in prisons in the background of different cultures of both the nations. It also highlights the policies, rules and steps taken by the government to accommodate the special requirements of such inmates and their children, who are most vulnerable in this situation. Here, the authors also touches upon the situations such children have to face and what their life holds ahead when they are born in jails.*

**Keywords-** *Women prisoners, India, US, Criminal justice system, Pregnancy etc*

## I. INTRODUCTION

Being or becoming a mother is considered the greatest virtue of a woman's life but can we say the same for under trial prisoners or convicts? India is a democratic republic and a welfare state whose constitution guarantees equal rights to its citizens but does the same constitution is believed in correctional systems of India as well? Because of being a welfare state, the correctional system or the prison system of India is reformative in nature rather than punitive. Convicts and under-trials are sent to prison so that they reform themselves and be a productive part of the society.

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Indian prison system is gripped with many problems like over-crowded cells, age old crumbling infrastructure, unhygienic mess and washrooms etc. and to keep pregnant women prisoners and their infant children here is not ensuring “rights” of a human. In such cumbersome situation, it is hard to imagine any reformatory work being done. Article 21 just not give the right to live but the right to live with dignity, resources and opportunities. We do not want the children and under trial prisoners to suffer for the crime that they do not have even committed. Even if the convict has committed an offence then also he has all the rights of being a human and fundamental rights.

As per Prison Statistics India 2015, NCRB, there are 4, 19,623 persons in jail in India. Women constitute 4.3% of this figure, which equals a total of 17,834 women. An analysis of prison statistics at five-year intervals reveals an increasing trend in the number of women prisoners –

YEAR	PERCENTAGE OF FEMALE INMATES INCREASED
2000	3.3
2005	3.9
2015	4.3

This shows that the female prison population has increased faster than the male prison population on every continent. A majority of female inmates are in the age group of 30 - 50 years (50.5%), followed by 18-30 years (31.3%), which means they are in their reproductive stages.<sup>3</sup>

In this paper, a comparative study has been done by the authors about the correctional systems of India and US. The paper highlights the different problems faced by pregnant women in prisons in the background of different cultures of both the nations. It also highlights the policies, rules and steps taken by the government to accommodate the special requirements of such inmates and their children, who are most vulnerable in this situation. Here, the authors also touches upon the situations such children have to face and what their life holds ahead when they are born in jails.

Strong reformatory steps needs to be taken and learned from other countries which have comparatively better correctional homes for such women and their offspring. We need to

<sup>3</sup>Prison Statistics India 2015, NCRB

understand that such children, rendered as “orphans of justice”, without any love, care, basic amenities and hostile conditions will eventually turn up to be a future liability on the state. We never hear any data about such prisoners or their children. The health care surveys should make efforts and ask questions on pregnancy and incarceration. The other steps could be the intervention of Health agencies, who can partner with justice agencies to collect data on pregnancy. The effort of this paper is just to bring these problems in light and suggest proactive measures to tackle this neglected problem of big democratic nations.

## **II. PROBLEMS FACED BY PREGNANT PRISONERS**

As we have already discussed that a prison would be the last place where any human would want to be let alone give birth to a child. Despite the continuous evolution of the prison system and criminal justice system, the conditions of most of the prisons are nothing less than a nightmare. Over-crowded cells, age old crumbling infrastructure, unhygienic mess and washrooms etc. these are the adjectives that comes to our mind when we think of a prison in India and to most of the people, this seems normal. Many factors are responsible because of which a prisoner commits a crime but that does not snatches away his/her basic human right, human dignity, and human sympathy.

**i. Substandard Living Conditions-** By asking to improve prison conditions, we do not ask that prisoners should have lavish and luxuries in confinement instead we are asking that it should be made humane and sensible. According to a report by India Today, in the Tiruchirapalli women’s prison in Tamil Nadu, inmates have to get mud to clean their toilets since there is no adequate supply of water. One of the inmates mentioned that water is so scarce that they have to choose between washing themselves and washing their clothes.<sup>4</sup>

Problems get more severe because of overcrowding as well. It contributes to the abysmal conditions of the inmates and spreads various communicable diseases. Such conditions could lead to many infectious diseases or even result fatal for the pregnant inmate mother or her baby.

**ii. Lack of Legal Aid-**The constitution mandates the right of trial to the needy under-trials but the reality differs from what is written in the constitution as legal aid is only provided at the time of trial. To help with the free legal aid to poor and needy, the Legal Aid Services Authorities Act, 1987, has been setup at Centre as well as State level by Legal Aid Boards. But these boards have been mainly inefficient in dealing with burgeoning number of cases. As the

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<sup>4</sup> Rebecca Shlafer & Laurel Davis, Pregnant, in prison and facing health risks: prenatal care for incarcerated women, THE CONVERSATION (Feb 19, 2016), <https://theconversation.com/pregnant-in-prison-and-facing-health-risks-prenatal-care-for-incarcerated-women-45034#:~:text=Pregnant%20women%20in%20prison%20are,stress%2C%20overcrowding%20and%20communicable%20diseases>

victim/ accused lack awareness and the lack of initiative and coordination between the police and the legal aid authorities, there are huge discrepancies between what the law mandates to the accused and what they actually get.<sup>5</sup>

**iii. Physical Mistreatment-** The one thing that prison administration has been continuously failing at is physical mistreatment and abuse of prisoners. Many inmates are also sexually abused by other inmates or by the staff and administrative members themselves. This too leads to pregnancy in prison. Such incidents occur because of poor infrastructure and adverse prisoner official ratio.

**iv. Food, Accommodation and Medical Treatment-** All persons deprived of their liberty shall have the right to be in a standard of living, including adequate food, drinking water, accommodation, clothing and bedding. It is a basic requirement that all inmates should be given a medical examination (without any expense) as soon as they have been admitted to a prison or place of detention.

#### **(A) The Situation in USA**

As per Alex Petit, women in US prisons are their most neglected and forgotten population.<sup>6</sup> This situation of incarcerated pregnant women is concerning due to several factors including substance abuse, domestic violence, poor nutrition and lack of care. Most criminal justice systems and prison systems collapse because they do not meet the standards of specialized care during pregnancy.

While some women can find incarceration as a beneficial change because of the worse living conditions they were living earlier. Prisons can provide them access to regular meals, a shelter and prenatal care. In some cases it could also save them from domestic and substance abuse. But this is not the case for majority. Females in US prison deal with many obstacles and mental trauma which ultimately affects their pregnancy in a bad way.

- **Lack of Specific Law-** The only rule that provides somewhat rights to incarcerated pregnant women is Eighth Amendment but even after that prisons do not have changes in such women's diet to meet the nutritional needs, provide a safe environment or to accommodate work requirements or exercises in her routine.
- **Discrimination amongst inmates-**Some women also opt out to receive any prenatal care because of the indifferent behavior of the health care staff. They also face humiliation

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<sup>5</sup>*Id.*

<sup>6</sup>Alex Petit, *OPINION: Pregnant women in US prisons are our most neglected and forgotten population*, INDIANA DAILY STUDENT (Oct 11, 2020), <https://www.idsnews.com/article/2020/10/opinion-pregnant-women-us-prisons>

and racial discrimination.

- **Rigid incarceration**-Most states use indiscriminate shackling of incarcerated women during pregnancy, labor and recovery. Shackling has negative impacts on both mothers and infants as it could limit the mother's ability to reposition herself that leads to reduced blood flow to the fetus.

The *American Congress of Obstetricians and Gynecologists (ACOG)* says that the use of physical and mechanical restraints on pregnant, laboring and postpartum women presents health and safety risks to women and their fetuses.<sup>7</sup>

- **Mental Trauma and neglected attitude**-Apart from other things, there is no lack of stressors like social isolation, psychological stress, overcrowding and communicable diseases.

If to draw conclusion from the above data, we can see the prison administration in both the countries have shown no remarkable progress in providing better pre or post natal care to the mothers and the infants. The US is unable to provide any recent data of incarcerated pregnant women in their jails. India, on the other hand, still have policies and rules framed because of the judicial intervention for the rights of such neglected and forgotten citizens.

### III. RULES GOVERNING PREGNANCY IN PRISON

Prison and its administration is dealt by different States and UTs as this topic falls in the State List according to the Seventh Schedule of Indian Constitution.<sup>8</sup> Different States and UTs have different tiers of prison establishments, these include-

- Central Jail
- District Jail
- Sub Jails/women Jails
- Borstal Schools
- Open Jails
- Special Jails

But do jails also follow some rules or procedures? And if yes, then what is the governing authority? In 2007, National Policy on Prison Reforms and Correctional Administration was framed, which gave a number of directives and guidelines relevant for women prisoners.

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<sup>7</sup>Supra at. 4

<sup>8</sup>Anonymous, *Rights of Pregnant Prisoners in India*, LAW YOG (May 19, 2020), <https://lawyog.com/rights-of-pregnant-prisoners-in-india/>

Furthermore, in 2016 **National Model Prison Manual**<sup>9</sup> came in force and this mandated prison computerization, special provisions for women prisoners, enhanced self-care services, repatriation of prisoners from abroad etc.

The provisions of the **National Model Prison Manual** are to be strictly followed in case of pregnant prisoners. This enables the temporary release for delivery of children in hospital outside the prison. Suspension of sentence may be considered in the case of casual offenders. Information about a woman's pregnant status should also be made to the Court that has ordered the detention, to enable the Court to grant bail (where appropriate) or modify the detention order as deemed necessary.

The birth certificate of the child born to a woman in prison should never mention the prison as place of birth to protect them against social stigma.

Pregnant and lactating women should be provided with special diet as per the National Prison Manual. Mothers in postnatal stage should also be allowed separate accommodation to maintain hygiene and protect their infant from contagion, for at least a year after childbirth. Pregnant and lactating women should receive advice on their health and diet under a Programme to be drawn up by a qualified health practitioner. Inmates should not be discouraged from breastfeeding their children. Medical and nutritional needs of women prisoners who have recently given birth whose babies are not with them in prison, women who have undergone abortion or have had a miscarriage should also be included in treatment and nutrition programs.

Women prisoners must have access to urine pregnancy test kits within prison, as per their requirement, free of cost. Pregnant women must also be provided information and access to abortion during incarceration, to the extent permitted by law.

Pregnant women must be given the option to take up work during their pregnancies and in the post - natal phase if they so choose. Work provided to them must be suited to their health conditions.

#### **(A) Rules governing pregnancy in prison in United States**

Currently, there are no such mandatory standards of care for pregnant prisoners in America. They have basic recognized guidelines for namesake but mostly systems fail to meet those guidelines.

In August 2019, Dania Sanchez (26 year old) alerted Denver County Jail deputies and medical

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<sup>9</sup>National Model Prison Manual, 2016

staff that she was in labor just hours before she gave birth to her baby son, alone in her cell without any medical aid or assistance. Her experience is not isolated, as a number of reports by women in prisons and jails across the country have revealed a similar disregard for pregnant women's basic needs.<sup>10</sup>

The Eighth Amendment<sup>11</sup> states that - "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." This has been comprehended to prisons must provide prenatal care, but there are no federal standards to ensure this care is adequately provided or not. This can explain that why only 54% of pregnant prisoners receive some kind of prenatal care.<sup>12</sup>

Carceral systems of 12 states do not specify medical examinations as a component of prenatal care, and in two states this policy is unavailable to the public. Twenty-three states do not provide screening and treatment for high-risk pregnancies also. Pre-existing arrangements for deliveries are not required in 24 states, while three states neglect to make this policy publicly available. Only Indiana has one law (as IC 11-10-3-3) that somewhat describes expected standards for pre or post natal care. But not to our surprise that it's fairly vague.

#### IV. CHILDREN OF WOMEN PRISONERS

Children are the most vulnerable and ignored categories of people present behind bars. Often, they are referred to as the 'orphans of justice'<sup>13</sup> or the 'Cinderella of penology'<sup>14</sup>. A child is like a mould; his future is determined by the kind of environment and company is a part of. The early years of the child have a lasting effect on the rest of his life. The childhood trauma, neglect and abuse owing to either imprisonment of a parent or upbringing in the prison are bound to have a detrimental effect on their development.<sup>15</sup>

The children of incarcerated parents are broadly classified into two categories- children that are allowed to live with their mothers in the prison (up to the age of 6 years) and those are left behind after their parent/parents are incarcerated. Children left behind can live with their remaining parent, with caregivers or in a childcare home. Information regarding the number of these children is missing except in the case of children living along with their mothers in the

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<sup>10</sup>Roxanne Daniel, Prisons neglect pregnant women in their healthcare policies, PRISON POLICY INITIATIVE (December 5, 2019), <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/>

<sup>11</sup>U.S. CONST. amend. XVIII

<sup>12</sup>*Id.* at 8

<sup>13</sup>Asha Bhandari, *Women Prisoners and their Dependent Children: A Study of Jaipur and Jodhpur Central Jails in Rajasthan*, 65(3) SOCIOLOGICAL BULLETIN 357-79 (2016).

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

prison.<sup>16</sup> The Honorable Supreme Court in its judgment in **RD Upadhyay vs. State of Andhra Pradesh and Others**<sup>17</sup> cited the recommendations made by the All India Committee on Jail Recommendations, laid down guidelines for care provisions with respect to this category of children. They stated that children of prisoners should not be treated as under trials or convicts while in jail with their mothers, they are entitled to age-appropriate food, shelter, medical facilities and opportunities for education and recreation. Children's physical growth must be monitored regularly along with proper medical facility within the prison. Every prison must have a crèche (for children aged between 0-3 years) and nursery facility (for children aged 3-6 year), which should preferably be located outside the prison premises. Before a pregnant woman is sent to jail, the competent authority must ensure that the jail has proper facilities for pre-natal and post-natal care.<sup>18</sup>

According to the statistics published by the National Crime Records Bureau<sup>19</sup>, the number of women prisoners with children is one thousand seven hundred and seventy nine. Among these women prisoners, 1,212 women prisoners were under trial prisoners who were accompanied by 1,409 children and 325 convicted prisoners who were accompanied by 363 children.<sup>20</sup> Children up to the age of 6 are allowed to stay with their mothers in prisons. Those below the age of 3 should be looked after in the crèche and rest falling between 3 and 6 should be taken care of in nurseries. The NCRB report has noted that Uttar Pradesh and West Bengal, which have reported the highest number of children inmates, 490 and 192, respectively, had no such facilities.

The children belonging to prisoners usually belong to impoverish households and face many threats to development and their overall well-being. Contact with adult criminal system at such a young age is detrimental for a child. For any child belonging in a tender age, it is not easy for them to adjust with the environment of the jails and the socialization patterns of these children get seriously affected. Due to constant change of prisons along with their mothers, these children are often uprooted and unsettled. Such children become violent and aggressive or show withdrawal behavior in prison.

#### **(A) Analysis of the United States**

Nearly three decades earlier, the United States began its social and political experiment of mass

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<sup>16</sup>Neelam Sukhrmani and Shivangi Gupta, *Children of Incarcerated Parents*, INDIAN PEDIATRICS (Mar. 15, 2020), available at: <https://indianpediatrics.net/mar2020/199.pdf>

<sup>17</sup> 1996 (4) SCC 422.

<sup>18</sup> *Supra* note 16.

<sup>19</sup>Prison Statistics India 2019, NCRB available at: <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>

<sup>20</sup> *Id.*

incarceration. Between 1980 and 2019, the number of incarcerated women increased by more than 700%, rising from a total of 26,378 in 1980 to 222,455 in 2019.<sup>21</sup> There have been various reforms and new approaches to the problem of penal reforms. Interestingly, many of these proposed reforms target women prisoners. Most of these women are doing time for drug-related offences and property crimes, about 10 percent are convicted of violent offences.<sup>22</sup>

Visions are part of a larger trend in corrections: the move from parenting from prison to parenting in prison.<sup>23</sup> There are two ways in which women and their children are treated in the United States. First is the operation of nurseries across the United States since the inception of women's prisons, more recent additions are residential facilities for female inmates and their children.<sup>24</sup> They are often located outside of the traditional "penal community" settings and are frequently run by human-service NGOs, with contracts from state departments of corrections. The ages of children residing in these houses vary. Some limit kids' ages to less than six years, although most allow older kids to stay for a longer period. School going kids usually attend local schools; preschoolers have an on-site childcare mechanism. Otherwise, kids' lives are dictated by the structure of confinement, they cannot come and go as they please or meet their friends and relatives after the visiting hours are over. The main goal of these residential facilities is to disrupt the punishment through separation model by uniting mothers and children. Such facilities that help parent and child live together are strong models for gender-neutral and also gender-responsive corrections that are required in prisons. In the United States, Bedford Hills has the longest-running prison nursery. It has helped hundreds of women behind bars to bond with their babies. Bedford Hills is one of the eight prison nurseries in the United States. The number of such programs has fluctuated as funding and sentiment towards them keeps on rising and falling, but now, more than ever, their effectiveness is under analysis as the number of women behind bars has skyrocketed.<sup>25</sup>

## V. RIGHTS OF WOMEN PRISONERS

Section 27 of the Prisoners Act, 1894 talks about separation of prisoners, it states that in case a prison consists of both male and female prisoners, the females shall be imprisoned in separate

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<sup>21</sup> Anonymous, *Incarcerated Women and Girls*, THE SENTENCING PROJECT (Nov. 24, 2020), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>

<sup>22</sup> Lynne Haney, *Motherhood as Punishment: The Case of Parenting in Prison*, 39(1) University of Chicago Press 105 (2013).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Elizabeth Chuck, *Prison nurseries give incarcerated mothers a chance to raise their babies-behind bars*, U.S. NEWS (Aug. 4, 2018), <https://www.nbcnews.com/news/us-news/prison-nurseries-give-incarcerated-mothers-chance-raise-their-babies-behind-n894171>

buildings, or separate parts of the same building, in such manner as to prevent their seeing, conversing or holding any intercourse with the male inmates. The model Prison Manual also talks about the rules and regulations governing women prisoners. Some of the salient inclusions are-

1. The State Government shall establish separate prisons for women offenders. Till separate prisons for women are established, both male and female inmates can be confined in the same prison with separate enclosures for females.
2. A register shall be maintained in every place of imprisonment including the following details- the information concerning their identity, reasons for their imprisonment and the authority ordering such imprisonment with full details of the order and the day and hour of their admission and release.
3. In case a woman is found, or suspected to be pregnant at the time of her admission or later a lady Medical Officer shall report the fact to the Superintendent. Arrangements shall be made to get her medically examined at the female wing of the District Government Hospital for ascertainment of the state of her health, pregnancy, and duration of pregnancy and the probable date of delivery.
4. As far as possible, arrangements for temporary release of prisoner will be made to enable a prisoner to deliver child outside the prison.
5. In case a child is born in prison due to high security risk cases, his name shall be registered in the local birth registration office. The fact that the child has been born in prison shall not be recorded as the place of birth.
6. A child up to the age of six years shall be admitted to prison with his relatives or otherwise. Children born in prisons can live with their mothers up to the age of six years. The Medical Officer shall examine the age of children born in prison for the purpose of this provision.
7. No child shall be admitted into or retained in prison if he has attained the age of six years. The Superintendent shall inform the Directorate of Social Welfare about all children of that age for placing them in a home run by the Social Welfare Department. Such children shall be kept in protective custody until their mother is released or the child attains such an age as to be able to earn his own livelihood.
8. For the welfare of the children of women prisoners, there shall be a crèche and a nursery school attached to a prison for women where the children of women prisoners shall be

looked after. Children below three years shall be allowed in the crèche and those between three to six years shall be looked after in the nursery school.

In the United States, the National Commission of Correctional Health Care talks about the counseling and care of the pregnant inmates. It states, pregnant inmates are given comprehensive counseling and care in accordance with national standards and their expressed desires regarding their pregnancy. Some of the important determinants are-

1. Prenatal care includes-

- Medical examination by a provider qualified to provide prenatal care
- Prenatal laboratory and diagnostic tests in accordance national guidelines.
- Orders and treatment plans documenting clinically indicated levels of activity, nutrition, medications, housing, and safety precautions.
- The given health authority must ensure that pregnant inmates and their children are provided opportunity for healthy outcomes, and that the inmate is offered supportive counseling and is not forced into making any decision contrary to her wishes and desires.

The eighth amendment to the US constitution guarantees to all inmates “serious medical needs” held in the case of *Estelle v. Gamble*<sup>26</sup>. However, meeting the healthcare need for pregnant women is much more difficult to be catered in a setup that is designed for men.

The NCCHC talks about the facilities for women that get pregnant in the prisons. The facilities must be provided for breastfeeding the infants, maintaining contact with children, provision for postpartum care and nutrition and non-use of restrains in pregnancy.<sup>27</sup>

Thirty years ago, the 1989 UN Convention on the Rights of Child noted, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, the best interest of the child should be the primary consideration.” In 2007, the UNESCO noted that infants should not be separated from their mothers due to incarceration because of the child’s best interest and family life. If the mother is incarcerated, the child should be present in the jail, if possible.<sup>28</sup>

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<sup>26</sup>*Estelle v. Gamble*, 429 U.S. 97 (1976).

<sup>27</sup>Anonymous, *Women’s Health Care in Correctional Setting*, NCCHC, <https://www.ncchc.org/womens-health-care>

<sup>28</sup>Susan Freidman, *The Realities of Pregnancy and Mothering While Incarcerated*, JOURNAL OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW <http://jaapl.org/content/early/2020/05/13/JAAPL.003924-20#xref-ref-20-1>

## **VI. CONCLUSION**

From the abovementioned information, it becomes important to highlight the problems faced by our prison system in accommodating pregnant women and their peculiar needs. We need to take proactive steps to ensure adequate safety and minimal standard that are required for human existence. The first step in this process is meticulous collection of data. It is essential that data on pregnancy among imprisoned women be collected in a uniform and standardized manner in the entire country. Standardized data collection ensures that data can be collected and analyzed easily. The health care and prison reforms survey conducted by the central and the state government must also include questions on pregnancy and children in prison. The healthcare facility must tie up the justice agencies in assisting in conduction of surveys. We are emphasizing the importance of surveys because, "If you cannot measure it you cannot control it."The next step is to ensure what is written in black and white is brought to life. Many judgments have been pronounced where the importance of proper facilities for children have been highlighted but to no avail. The facility of a nursery and a crèche for young children and their mothers is a distant dream. In a country where violence and death in prison is the highest of all times, providing facility to pregnant women seems far-off. But we must continue to fight for justice and rights with all might and zeal because every person has certain rights that cannot be taken away by any enforcement agency.

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