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UNVEILING GENDER DISPARITIES: AN INTRODUCTION TO THE INDIAN PRISON SYSTEM

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Abstract

This article examines the multifaceted challenges and ongoing reforms aimed at ensuring the holistic well-being of women incarcerated in Indian prisons. Historically, correctional facilities in India, predominantly designed for male inmates, this male-centric bias of the criminology have largely neglected the gender-specific needs of women. All such have adversely affected the cause of women prisoners. The paper highlights the key challenges faced by women, including overcrowding, sanitation and hygiene, negative health situations and nutrients, vulnerabilities of pregnancy and child care, and violence. The article highlights the dire state of mental health among female prisoners, who face elevated risks of depressive disorders and suicidal ideation due to social isolation, limited family contact, and a severe lack of therapeutic interventions, leading to profound human rights violations. Despite robust constitutional safeguards, landmark judicial pronouncements, and the comprehensive Model Prison Manual 2016, there is abysmal on-the-ground implementation. The paper highlights the factors making such reforms ineffective, including a lack of political will, financial resources, and institutional accountability, etc. The paper advocates the possible holistic reform, grounded in international best practices, to ensure that the dignity, well-being, and rights of women in Indian Prisons are not just on paper but in practice, and also focuses more on gender-responsive and rehabilitative framework.

Key Words: - Women Prisoners, Mental Health, Hygiene, Violence, Constitutional Rights, Prison Reform, India

I. INTRODUCTION

In the wake of industrialization, westernization and urbanization, Indian society has been passing through drastic and fundamental changes both in the structures, socio-economic and cultural spheres which not only produced a changed physical environment and a new form of economic organization but also affected the social order, solidarity, human conduct and thought

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traditionally women, whose role was mainly confined to the domestic area has now switched over to productively job sector. She is found to be actively participating in area sphere of professional life along with the male counterparts. Women are participation in economic activities; political insulations and a social sphere have increased to the greater extent. However, because of family disorganization, marital discord, high aspiration level and frustration due to no fulfillment stress and failure in coping process and alteration women are found to getting involved in criminal activities more in number in the present-day society. Although both men and women are subjected to imprisonment, little consideration has been given to the different needs and problems of imprisoned women as opposed to men.²

The landscape of incarceration in India, while primarily associated with male offenders, is witnessing a significant and often overlooked shift: the steadily increasing proportion of female inmates. This demographic change brings into sharp focus a critical, yet historically neglected, aspect of penal reform: the holistic well-being of women in Indian prisons. Unlike male prisoners, they suffer more pain and trauma because they cannot face separation from their families and loved ones. Since Aristotle calls equality among unequal as inequality, the male and female prisoners should not be treated alike.³ The female inmates, because of their biological needs, deserve extra attention and have different demands than their male counterparts. Unfortunately, the existing correctional infrastructure and administrative systems, largely conceived and constructed with male prisoners in mind, have proven woefully inadequate in addressing these specific requirements, leading to conditions that frequently infringe upon basic human rights and undermine the very concept of rehabilitation. As Kiran Bedi writes about the Tihar Jail in her book “It’s Always Possible”, “Here, women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self-respect they reached the prison with. It must be considered some sort of miracle that these women managed to cling to their sanity, despite the overwhelming odds they faced.”⁴

There are a number of international rules and standards governing the rights of prisoners. The

² National Commission for Women, “A study of Condition of Women Prisoners and Their Children in Eastern U.P. Jails”, *available at*: https://ncwapps.nic.in/pdfReports/A_Study_of_condition_of_Women_Prisoners_and_Their_Children_in_Eastern_UP_Jails.pdf (last visited on Sept. 01, 2025).

³ Manika Kamthan, “Women Prisoners in India: Tracing Gender Gaps in Theorizing Imprisonment” 6(6) Forensic Research & Criminology International Journal 470 (2018).

⁴ *Ibid.*

International Covenant on Civil and Political Rights⁵ (hereinafter referred to as ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibit torture and cruel, inhuman, or degrading treatment or punishment without exception or derogation. The Standard Minimum Rules adopted by U.N. Economic and Social Council in 1957 are one of the most comprehensive sets of guidelines determining the rights of prisoners.⁶ In 2015, certain rules at international level, under the heading of the Nelson Mandel's rule adopted by United Nations Office on Drugs and Crime. This adaptation is one kind of tribute to the prison life of Nelson Mandela. These rules also named as The United Nations Standard Minimum rules for the Treatment of Prisoners. There is total 122 rules and few rules of them includes and highlights over women prisoner for separation of categories, special accommodation for prenatal and postnatal care and treatment, contact with outside the world etc.⁷

In India, the legislations were made and drafted with after recommendation of various committees and commissions. Post independence, the Indian incarceration system has undergone under number of reforms, but progress has been slow. In 1987, nearly four decades after independence, the Justice Krishna Iyer committee was the first to examine the situation of women in prison. The committee recommended an increase in the number of women officers to address crimes involving women and children. the committee made important recommendations regarding the rights of pregnant prisoners, including the conditions for childbirth in prison. It also suggested guidelines for how long children can stay with their mothers in prison, their care through crèches and nurseries, and the provision of suitable clothing for different climates. The committee emphasized regular medical check-ups, access to education and recreational activities, and adequate nutrition for both children and nursing mothers.⁸

In 2016, the Supreme Court issued a significant judgment on the inhumane conditions in 1,382 prisons across India. The main issues raised in the case included overcrowding, unnatural deaths of prisoners, lack of staff, and inadequate training of staff. After reviewing the state governments' responses, the court criticized the lack of genuine action and the superficial steps taken

⁵ The International Covenant on Civil and Political Rights, 1966.

⁶ Women in Indian Prisons Do Not Get Gender-Specific Services, Lack Basic Sanitation, Hygiene Facilities, *available at: <https://sabrangindia.in/women-indian-prisons-do-not-get-gender-specific-services-lack-basic-sanitation-hygiene/>* (last visited on Sept. 04, 2025).

⁷ Rajaram Garud and Anjali Bondar, "Women Prisoners And Their Rights: Special Need To Concern" 5 *Chanakya Law Review* 2-18 (2004), *available at: <https://cnlu.ac.in/wp-content/uploads/2025/05/Women-Prisoners-And-Their-Rights-Special-Need-To-Concern-by-Prof.-Rajaram-Garud-Dr.-Anjali-Bondar.pdf>* (last visited on Sept. 03, 2025).

⁸ P. Lavanya, "Unique Challenges Faced by Women Prisoners in India: Beyond the Basics" 3(1) *White Black Legal* (2024).

by the states to address these problems. Despite funds being allocated for prison improvements under the 13th Finance Commission, many states failed to use these funds, and in some cases, no funds were allocated at all.⁹

The updated Model Prison Manual of 2016 was a result of the Supreme Court's intervention, replacing the older 2003 version. The new manual includes provisions to protect the rights of women prisoners, including measures to prevent undertrials from remaining in prison due to lack of legal support or bail. It also provides special guidelines for women and their children in prison, which need to be implemented by states and Union Territories.

Although the Constitution of India does not explicitly deals with the Women's Prisoners' rights. The Constitution of India is fundamental law of the country which specifically protects the human rights as Indian citizens. Preamble of Indian Constitution itself guarantees justice, equality, liberty to each and every Indian. Protection of life and maintaining the dignity of the individual also part of the Constitution of India. Through Article 14¹⁰ and Article-15¹¹, The Constitution of India guaranteed equality of status and opportunity and prohibits discrimination on the grounds of sex. Article-14 provides equal protection of laws to women in India and Article 15 prohibits discrimination on grounds of sex. It is Article-15 (3) of the Constitution which allows the State to make special provisions for women. Hence, it is obligation on the State to provide adequate facilities and to fulfil needs of women prisoners by making special provisions. Article-21¹² guarantees the right to life and protects the human dignity of all citizens.¹³

The apex court in its various judgment has expressed the concern over the prevailing condition of women in prison system and asked the legislature to come up with reforms.

In *Sunil Batra v. Delhi Administration*¹⁴, the Supreme Court held that prisoners, including women prisoners, have the right to basic amenities, medical care, and protection from abuse and discrimination. In *Hussainara Khatoon v. State of Bihar*,¹⁵ The court recognized the right of

⁹ *Supra* note 8.

¹⁰ The Constitution of India, art. 14.

¹¹ *Id.*, at art. 15.

¹² *Id.*, at art. 21.

¹³ Rajaram Garud and Anjali Bondar, "Women Prisoners And Their Rights: Special Need To Concern" 5 *Chanakya Law Review* 2-18 (2004).

¹⁴ 1980 SCR (2) 557.

¹⁵ 1979 SCR (3) 532

indigent prisoners, including women prisoners, to legal aid and representation, and the obligation of the state to provide it. *In R. D. Upadhyay v. State of Andhra Pradesh*,¹⁶ The Supreme Court of India established guidelines for the treatment of pregnant women incarcerated in penal facilities. These recommendations pertain to medical facilities mandated for incarcerated pregnant women, the nutritional needs of pregnant women and their offspring, childbirth procedures (emphasizing that the woman should be granted bail as often as feasible to deliver outside the prison), and the custody arrangements for children of incarcerated mothers. Overall, these judgments have played a significant role in protecting the rights of women prisoners in India and helped to reduce discrimination and promote gender equality in the criminal justice system.

There are numerous clearly defined Rights of Prisoners. However, the implementation of most of the conditions is found missing in prisons today.

II. CHALLENGES FACED BY WOMEN PRISONERS IN PRISONS IN INDIA

Accommodation

Overcrowding directly relates to a lack of space for prisoners and increases pressure on already limited facilities available in jails. The effects of overcrowding often become even more pronounced in the case of women, as they are usually restricted to a smaller enclosure of the jail due to lack of proper infrastructure for them. Overcrowding can worsen hygiene conditions and health problems with even minor infections spreading quickly the disproportionality equal number of toilets and bathrooms exacerbates the situation. Overcrowding also has severe psychological effects on prisoners forced to live in such close quarters with one another. Though convicted and undertrial prisoners are to be housed separately, this is not usually possible due to severe space constraints. Further, young offenders (18-21 years of age) that are also to be housed separately, mostly find themselves with older women offenders. Overcrowding in prisons also leads to children of prisoners having to live in cramped and undesirable conditions. The national average occupancy was reported at 114.4% in 2015. States/UTs such as Dadra and Nagar Haveli, Chhattisgarh and Delhi have reported the status of overcrowding in prisons as high as 276.7%, 233.9% and 226.9% respectively.¹⁷

¹⁶ AIR 2006 S.C. 1946.

¹⁷ Kiran R. Naik., "Women In Prisons India" 6(2) *International Journal of Research and Analytical Reviews* (2019), available at: <https://www.ijrar.org/papers/IJRARIAXP008.pdf> (last visited on Sept. 10, 2025).

Condition of Health and Nutritional Services in Women's Prisons In India

The main problem found in the official study of female inmates in 144 Central Jails, which was done with the help of the National Commission for Women (NCW) and several NGOs, is that female prisoners don't get enough health and nutrition services. Since their inception, male criminals have predominantly shaped the construction of Indian prisons. India's prisons often ignore women's extra health needs, like menstruation and reproductive care, because of the legacy of gender inequality that is still present today. Male prisoners often suffer from post-traumatic stress disorder, anxiety, despair, and various other mental health disorders, which can lead to suicidal ideation and self-harm.¹⁸

However, the availability of mental health services is limited and often fails to address the needs of the inmates. During the 2003 drought, conditions were so severe that female inmates in some facilities received only one pail of water every four to five days, which they shared. The insufficient healthcare services for female prisoners in India stem from several factors, including overcrowding, a deficiency of female personnel and medical officers, an absence of gender-sensitive training for prison staff, inadequate nutrition, and insufficient facilities for menstruation and pregnancy care. These considerations further underscore the inadequate nutritional and hygienic circumstances experienced by female convicts. Substantial enhancements to female correctional facilities are necessary to ensure that incarcerated women enjoy an adequate quality of life throughout their imprisonment.¹⁹

Currently, the majority of institutions adequately attend to the physical health of female convicts by complying with the directives of the New Prison Manual. Female convicts often neglect their mental health issues. None of the model correctional facilities for women provide ample possibilities for regular therapeutic sessions. Their absence of social interaction results in mental distress and melancholy. Women's correctional facilities often house female inmates at considerable distances from their residences. Consequently, family members are unable to see them regularly.

¹⁸ Vajawat, B. and Chandra, P. S., "Becoming a Mother Behind Bars, The Citizen, India" (2021), available at: <https://www.thecitizen.in/index.php/en/NewsDetail/index/15/21252/Becoming-a-Mother-Behind-Bars> (last visited on Sept. 10, 2025).

¹⁹ D. Sikarwar, "Some Prisoners To Get Remission" *The Economic Times* (2022), available at: <https://economictimes.indiatimes.com/news/india/some-prisoners-to-get-remission/articleshow/90383489.cms?from=mdr> (last visited on Sept. 05, 2025).

Sanitation and Hygiene

Most jails are lacking in basic facilities of sanitation and hygiene. While the prescription in the Prison Manual is to ensure one toilet and one bathing cubicle for every 10 prisoners, this is rarely seen on the ground. There are usually a small number of bathrooms and toilets catering to a disproportionately large prison population. Women's toilets should also have safe entrances and be situated in secure areas away from male intervention, which is not always the case. The incorrect placement and structure of toilets and bathrooms in prison can increase the risk of sexual harassment/abuse of women prisoners. It is essential to note that a large majority (81.8%) of female prisoners fall in the menstruating age group of 18-50 years, increasing their need for proper sanitation facilities as well as access to adequate menstrual hygiene products. They are to be provided with sterilized sanitary napkins as per their requirement, but this is largely missing. Women are reportedly charged for sanitary napkins in some prisons or are only provided a set monthly number irrespective of need. This leads women to resort to using unhygienic materials such as cloth, ash, pieces of old mattresses, newspapers etc.²⁰

A study conducted by one of the authors (Himani Gupta) in a prison in Maharashtra in June 2023 revealed that water, sanitation, and hygiene facilities failed to meet the demands of women imprisoned there. This presents significant challenges for women, who need more water to maintain personal hygiene during menstruation. The lack of continuous water supply also forced women to store water, taking up valuable space in the limited number of toilets available. Only two toilets forced about 50 women to share all their daily activities, including excreting, changing napkins, and washing clothes and utensils. Women also reported feeling discouraged from using the filthy restrooms for frequent urination, which led to a greater incidence of urinary infections.²¹

The study also revealed that prison authorities relied on sanitary napkins donated by non-governmental organizations. These organizations made decisions about the type, quality, and quantity of menstrual absorbents, which led to the provision of substandard products. Many women reported that the quantity of sanitary napkins provided was insufficient and that the quality was poor (subpar absorption, causing discomfort, skin rashes, and infections). In one instance, the prison received a donation of "reusable" sanitary napkins. Each woman was given only one pair to manage her entire menstrual cycle. The severely limited access to water and detergent

²⁰ *Supra* note 17.

²¹ *Id* at 8.

made it impractical to wash these reusable napkins after each use.²³ India took an important stride forward by formulating the 'National Menstrual Hygiene Policy,' recognizing menstruation as a natural process that demands more meaningful attention. At its heart lies a crucial principle: ensuring equity in the safe and dignified management of menstrual hygiene.

The draft policy states, "Prioritize equity to enable all menstruating individuals, regardless of their socioeconomic status and geographical location, to have equal opportunities to access and manage their menstruation in a safe and hygienic address. The draft policy aims to address the disparities and barriers that hinder certain groups from accessing necessary menstrual products. This inclusion reflects a positive step forward. However, the policy falls short of providing a concrete action plan to enhance menstrual hygiene management in prisons. The policy also fails to consider the Ministry of Home Affairs as a crucial stakeholder who significantly influences menstrual hygiene management in prisons."²²

Challenges During Reproductive and Pregnancy Stage

Since most female prisoners are of reproductive age, they are vulnerable to a range of physical and mental health issues that require further medical care. Furthermore, breaking long-standing norms of femininity results in a markedly lower level of social acceptance for female offenders. Together, these factors have a negative impact on prisoners' mental health, leading to stress disorders, depression, and a host of other psychological issues. Furthermore, there is another problem with the medical care of female inmates who are pregnant or recently gave birth in prisons. Pregnant women sometimes find it extremely difficult to bear their pregnancies while incarcerated due to a lack of female staff, inadequate prenatal care, inadequate medical support, and minimal social support. As a result, the lack of proper medical treatment and amenities makes it much harder for female prisoners to endure their captivity.

*In the case of State of Gujarat v. Jadav @ Jatin Bhagvanbhai Prajapati & Ors.,*²³ The Gujarat High Court has implemented a recommendation from R.D. Upadhyay about the provision of bail for pregnant women, allowing them to give birth outside of jail facilities. Upon determining the woman's guilt in the crime, the Court, upon discovering her pregnancy, postponed

²² Model Prison Manual, Bureau of Police Research and Development. Available at: <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf> (last visited on Sept. 03, 2025).

²³ R/CR.A/652/2008.

her incarceration and permitted her release on bail for eleven months. Consequently, she was permitted to deliver her child outside the walls of the detention facility. Simultaneously, she was not retained there to offer care for the infant during its initial months of life. The Court mandated that the correctional facility personnel adhere to the woman's plea to retain custody of her children until they attain the age stipulated in the relevant Jail Manual.

Hallo Bi v. State of Madhya Pradesh case.²⁴ In her petition, she requested the Court to mandate the state to grant her authorization to terminate her pregnancy. She asserted that her pregnancy was a consequence of being compelled into sexual intercourse. Despite the MTP Act not necessitating judicial approval in any situation, the jail officials forwarded Hallo Bi's abortion request to the Chief Judicial Magistrate. The Chief Judicial Magistrate refused the request. The writ petition was subsequently filed as a result. The decision of the High Court to allow the woman to terminate her pregnancy was based on the judgment of the Supreme Court in the case of ***Suchita Srivastava v. Chandigarh Administration.***²⁵ The Supreme Court concluded that a woman's right to make decisions about her reproductive health is an aspect of personal autonomy protected by Article 21 of the Indian Constitution. The High Court evaluated the decision permitting the woman to terminate her pregnancy. The Court ruled that “forced prostitution” is tantamount to rape, so categorizing it as one of the criteria required under Section 3 of the MTP Act for the termination of a pregnancy.

In the case of the ***High Court on Its Own Motion v. State of Maharashtra,***²⁶ The Court observed that pregnant women constitute a comparable group that encompasses jailed women. The Court determined that pursuant to Article 21 of the Indian Constitution, all pregnant women had the basic right to make reproductive choices, including the option to terminate their pregnancies if they wish. The Court mandated that a urine pregnancy test be administered to all female inmates of reproductive age upon their admission to the facility. If the test result indicates that the woman is pregnant, the attending physician must inform her of her right to terminate the pregnancy in accordance with the MTP Act. It was determined that when a pregnant inmate indicates a wish to terminate her pregnancy, she should be swiftly sent to a hospital, and all necessary assistance should be provided to facilitate the termination. It recognized that a woman's decision to terminate her pregnancy is not impulsive but is instead one that has been

²⁴ 2013 (1) MPHT 451.

²⁵ (2009) 9 SCC 1.

²⁶ 12-Cri. SMP-1-2021.

"meticulously contemplated" by the individual. Furthermore, it recognized the necessity to expand the parameters of Explanation 2 to Section 3 of the MTP Act to encompass married couples and any cohabiting pairs resembling a marital relationship. The High Court concluded that the human right to live with dignity, as protected by Article 21 of the Constitution, underpins a woman's right to autonomously decide whether to have children, with her decision stemming from that right. The Court asserted that, for international human rights law, rights are conferred upon an individual at birth, and a fetus that has not yet been born does not possess human rights. It recognized a woman's bodily autonomy and affirmed that her rights are paramount in deciding whether to conceive, continue a pregnancy to term, or terminate it.

Despite all such judgment and provisions in legislation, The problem herein lies within consistent implementation and leaving it up to the discretion of state specific authorities on how, when and where to implement these policies. The absence of monitoring mechanisms to ensure compliance with these guidelines leaves pregnant women inmates exposed and vulnerable to the harshness and complexities of the system.

III. CONCLUSION AND SUGGESTIONS

The conditions within India's correctional facilities are undergoing a gradual but discernible enhancement concerning the quality of available healthcare, the regularity of medical screenings for inmates, and the standard of care provided to women with health concerns. This progress is attributable to increased governmental attention and judicial activism. However, despite these advancements, the holistic well-being of female detainees remains a significant concern, particularly in the realm of mental health, which has historically suffered from inadequate infrastructure and insufficient funding.

Female detainees face an elevated risk of mental illnesses, including depressive disorders and suicidal behavior, largely due to the severe conditions of confinement, such as overcrowding, incarceration in isolated regions, and the resultant social isolation. Moreover, the governing entities have been found to have failed to implement adequate measures for maintaining cleanliness, contributing to morbidity and the spread of diseases within prison populations.

To comprehensively address these critical issues and ensure the holistic well-being of women in Indian prisons, several key suggestions are imperative:

- 1. Prioritize Mental Health Services:** Initiating regular, accessible counseling sessions and

psychological support programs throughout all prisons is crucial. These sessions should be conducted by qualified mental health professionals, ensuring privacy and continuity of care. Addressing the underlying causes of mental distress, such as isolation and fear of familial disconnection, must be a central focus.

- 2. Enhance Social Support and Family Connections:** Facilitating more frequent and less restrictive family gatherings will significantly mitigate concerns regarding exclusion and isolation, which are vital for sustaining optimal mental health. Exploring alternative communication methods, where feasible, could also bridge geographical distances.
- 3. Implement Robust Hygiene and Sanitation Protocols:** Proper sanitation is essential to cultivate a culture of exemplary hygiene within women's jails. This includes ensuring the prompt sanitation of washbasins in each cell and the continuous availability of clean and uncontaminated drinking water.
- 4. Standardize Menstrual Hygiene Provision:** Sterilized, high-quality sanitary napkins must be consistently provided to female detainees in adequate quantities to facilitate proper menstrual hygiene practices. The provision should be based on inmate needs rather than relying solely on inconsistent donations. Furthermore, sufficient access to water and appropriate disposal mechanisms for menstrual waste are non-negotiable.
- 5. Gender-Sensitive Training for Prison Personnel:** Comprehensive training programs for all prison staff, including medical officers and warders, are necessary to ensure they possess the essential expertise and sensitivity required to address the gender-specific health, psychological, and social needs of female offenders.
- 6. Effective Resource Allocation and Monitoring:** While proposals and recommendations exist, their proper implementation requires substantial financial resources and manpower. Robust monitoring mechanisms are needed to ensure that allocated funds are utilized effectively and that directives are translated into tangible improvements on the ground.

The prognosis for the health conditions of female detainees in India appears optimistic, particularly due to the recent initiatives and efforts undertaken by both the Indian government and prison officials, as well as the proactive role of the judiciary. However, sustained commitment, adequate resource allocation, and a human-rights-based approach are essential to overcome existing challenges and achieve a truly holistic standard of care for women in Indian prisons.