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THE STATUS OF WOMEN PRISONERS IN INDIA

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Abstract

India's criminal justice system operates within a patriarchal framework that marginalizes women at every stage from arrest to incarceration. Prisons, largely designed for men, fail to meet the gender-specific needs of women, especially in terms of healthcare, hygiene, child care, and mental health. These challenges are compounded by factors such as poverty, caste, and illiteracy, making women prisoners one of the most vulnerable groups in custody.

Despite forming a small percentage of the prison population, women face systemic neglect and inadequate rehabilitation opportunities. Converting male prisons for female use without structural reforms only deepens their marginalization. This paper calls for urgent, gender-sensitive reforms aligned with constitutional values and international standards such as the Bangkok Rules and Nelson Mandela Rules. A transformative approach that addresses intersectionality and human dignity is essential to ensure equality and justice for women behind bars.

1. INTRODUCTION

India's criminal justice system, much like the larger society in which it is embedded, is fundamentally patriarchal. Within this structure, women face systemic disadvantages at every stage of their interaction with the law—from arrest to conviction and incarceration. These disadvantages are not only gender-based but are compounded by socioeconomic factors such as poverty, illiteracy, caste, and regional disparities. The intersectionality of these issues creates an environment where women prisoners become some of the most vulnerable groups within the criminal justice system¹.

In many cases, women prisoners in India are incarcerated for petty and non-violent offences, often as a result of social pressure or familial coercion. A large proportion of these women

¹ *Women in prison: A report by National Human Rights Commission*. New Delhi: NHRC India. Retrieved from <https://nhrc.nic.in>

come from marginalized and underprivileged backgrounds, including Dalits, Adivasis, and economically backward communities². These groups have historically been denied access to quality education and employment opportunities, resulting in a lack of legal awareness. The absence of even basic education means that many women are unaware of their legal rights, court procedures, or the availability of legal aid. Consequently, they are unable to advocate for themselves and often remain incarcerated simply because they are too poor or uninformed to secure bail or hire a lawyer³.

This lack of legal knowledge makes women more susceptible to manipulation and abuse within the criminal justice process. Many female detainees are coerced into signing false confessions or making self-incriminating statements without fully understanding their legal implications⁴. They are often denied access to proper legal counsel or informed consent, leading to wrongful incarcerations and prolonged pre-trial detentions. Undertrial prisoners—those who have not yet been convicted—make up a significant percentage of the female prison population in India. According to the National Crime Records Bureau (2021), as of the end of 2021, there were 22,918 women prisoners in India, of whom 77% were undertrial detainees.

The infrastructure of prisons in India is overwhelmingly inadequate to support this population. There are only 32 dedicated women's prisons in the country, with a total capacity of 6,767, making the actual occupancy almost four times the sanctioned limit⁵. The majority of female inmates are therefore housed in either separate enclosures within male prisons or in overcrowded facilities, where basic amenities such as hygiene, healthcare, and nutrition are severely lacking. This results in the violation of fundamental rights, including the right to dignity and humane treatment as enshrined in Article 21 of the Indian Constitution.

The situation becomes even more distressing when considering incarcerated mothers. According to the NCRB⁶, 1,650 women prisoners had children living with them inside the prison premises. Among these, 1,418 were undertrial prisoners, accompanied by 1,601 children, while 216 convicted prisoners were housed with 246 children. The conditions in

² Female prisoners and legal aid in India. *Journal of Law and Society*, 44(3), 389–406. <https://doi.org/10.1111/jols.12053>

³ Gendered injustice in Indian prisons. *Economic and Political Weekly*, 50(22), 53–59.

⁴ *Prison conditions in India*. Retrieved from <https://www.hrw.org>

⁵ *Prison statistics India 2021*. Ministry of Home Affairs, Government of India. Retrieved from <https://ncrb.gov.in>

⁶ *Prison statistics India 2021*. Ministry of Home Affairs, Government of India. Retrieved from <https://ncrb.gov.in>

which these children are raised fall drastically short of the standards mandated for child welfare under both national and international frameworks. They are often deprived of proper nutrition, early education, and medical care, placing them at a severe disadvantage compared to their peers in the outside world⁷.

Sexual violence and harassment constitute another grave concern in women's prisons in India. Women inmates are often subject to exploitation and abuse not only by fellow inmates but also by male prison staff and law enforcement officers. Reports from Human Rights Watch and Amnesty International indicate that incidents of custodial rape and harassment are underreported due to fear of retaliation, stigma, and lack of institutional support. Moreover, most prisons are ill-equipped to deal with gender-specific healthcare needs, including menstrual hygiene, pregnancy, and post-natal care. Many women lack access to sanitary products and are forced to rely on unhygienic alternatives, which often result in infections and long-term health issues⁸.

Despite the alarming nature of these issues, legislative and policy frameworks aimed at protecting women prisoners exist but are poorly enforced. The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders—commonly known as the Bangkok Rules⁹—were adopted by the UN General Assembly in 2010 to address the specific needs of incarcerated women¹⁰. These rules emphasize the importance of gender-sensitive approaches, including provisions for maternal care, psychological counseling, vocational training, and alternatives to incarceration for pregnant women and mothers of young children. Similarly, the Nelson Mandela Rules, formally known as the United Nations Standard Minimum Rules for the Treatment of Prisoners, were adopted in 2015 and outline minimum international standards for the treatment of all prisoners, including women. However, the implementation of these international norms in India has been largely symbolic. The Indian legal framework still operates under the outdated Prisons Act of 1894, which fails to incorporate gender-specific provisions or modern correctional practices¹¹. While some state governments have introduced their own prison manuals and reforms, the lack of standardization

⁷ *Women in prison: A report by National Human Rights Commission*. New Delhi: NHRC India. Retrieved from <https://nhrc.nic.in>

⁸ *Handbook on women and imprisonment (2nd ed.)*. Vienna: UNODC. Retrieved from <https://www.unodc.org>

⁹ <https://www.penalreform.org/issues/women/bangkok-rules/>

¹⁰ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. A/RES/70/175. Retrieved from https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/175

¹¹ Revisiting the Prisons Act, 1894: A need for gendered reforms. *Indian Journal of Criminology*, 47(2), 15–25.

and oversight leads to inconsistent application across states. Moreover, mechanisms for monitoring human rights violations in prisons, such as prison visitors' boards and human rights commissions, are either inactive or lack the authority to enforce recommendations.

India's constitutional guarantees further bolster the argument for prison reform. Article 14 ensures equality before the law, while Article 21 protects the right to life and personal liberty. These rights extend to all citizens, including prisoners. Yet, these constitutional mandates are frequently violated in the case of women inmates due to neglect, institutional apathy, and societal indifference. For instance, transgender individuals, though recognized legally in India, are completely excluded from the prison system's structural planning. There are no designated facilities for transgender inmates, forcing them into male or female wards based on arbitrary decisions, which places them at high risk of sexual violence and mental trauma.

Language barriers further compound the difficulties faced by women prisoners, especially those who are migrants or non-residents. Many are unable to understand legal documents or communicate with their advocates or prison staff due to differences in language or dialect. This leads to a total dependency on others, increasing their vulnerability to exploitation and misinformation. It also hinders access to rehabilitation programs and vocational training, which are crucial for reintegration into society post-release.

Healthcare services in prisons are another area of concern. According to UNODC, women have distinct healthcare needs that go largely unmet in Indian prisons. Common issues include lack of access to gynecological care, delayed diagnosis of serious illnesses, and inadequate mental health support. This is especially troubling given the higher prevalence of trauma, depression, and anxiety among incarcerated women, many of whom are survivors of domestic violence, sexual assault, or extreme poverty.

In this context, it is essential to consider alternatives to incarceration for non-violent female offenders. Community service, probation, and rehabilitation-focused programs are recommended under the Bangkok Rules as preferable to custodial sentences, particularly for pregnant women and mothers of dependent children. Despite this, the use of non-custodial measures in India remains minimal, primarily due to a lack of awareness among law enforcement and judicial officers, and the absence of structured frameworks for their implementation.

The issue of reintegration into society also remains largely unaddressed. Upon release, former female prisoners face social stigma, rejection by family, and difficulty in finding employment. This cycle of exclusion often leads to recidivism. There is a lack of post-release support services, including housing, employment assistance, psychological counseling, and community reintegration programs. Moreover, institutional discrimination against former prisoners in areas such as voting rights, access to government benefits, and educational opportunities further marginalizes these women.

To address these multiple, intersecting challenges, a comprehensive reform of the prison system is urgently needed. First, legal reforms must prioritize the implementation of the Bangkok Rules and the Nelson Mandela Rules, including the amendment of the outdated Prisons Act of 1894. Second, infrastructural improvements must be made to accommodate the growing number of women prisoners, including separate and adequately resourced facilities for women and transgender individuals. Third, efforts must be made to improve legal literacy and access to legal aid for incarcerated women, especially undertrials. Fourth, gender-sensitive healthcare and mental health services should be made mandatory. Fifth, social reintegration and non-custodial sentencing options should be institutionalized to prevent the criminalization of poverty and victimization of vulnerable women.

India's obligations under international human rights instruments and its own Constitution demand that all prisoners, regardless of gender, be treated with dignity and fairness. The current situation of women prisoners—marked by systemic neglect, abuse, and inadequate facilities—is a glaring contradiction to the democratic and egalitarian ideals the country aspires to uphold. Reforming the prison system is not only a legal necessity but a moral imperative to ensure that justice is truly inclusive and humane.

1.1 **Issues relating to Women Prisoners**

As the number of incarcerated women in India steadily rises, the need for gender-specific reforms in prison systems becomes increasingly urgent. Simply building physical prison infrastructure is insufficient—what is truly required is a comprehensive approach that ensures the protection of women prisoners' rights and dignity. The provision of basic necessities such as hygiene, sanitation, adequate nutrition, medical attention—especially during pregnancy—along with appropriate lighting and ventilation, is essential to uphold the fundamental human

rights of these women¹². Prisons are punitive institutions, no doubt, but incarceration does not strip individuals of their humanity or their entitlement to dignity. Women prisoners, like their male counterparts, are protected under several constitutional and international human rights frameworks, yet they often remain at the margins of penal policy discussions.

Historically, male inmates have far outnumbered their female counterparts, but the current scenario suggests a gradual shift. While women still constitute a smaller proportion of the prison population, the increasing numbers demand structural changes in prison management and policies to accommodate their specific needs¹³. The unique biological, psychological, and social vulnerabilities of women call for tailored interventions rather than one-size-fits-all penal solutions. Unfortunately, many of these needs are ignored.

Women prisoners suffer disproportionately due to the lack of proper sanitation, poor access to healthcare, limited access to education or vocational training, and sometimes even abuse by prison officials¹⁴.

The situation is further complicated by the presence of children in prisons. In India, it is legally permissible for children under the age of six to stay with their mothers who are imprisoned. However, there is a pressing concern regarding the adequacy of arrangements made for these children, especially concerning their nutrition, education, and psychological well-being¹⁵. These children, despite being innocent, are involuntarily subjected to the harsh realities of prison life, which may have long-term negative effects on their development¹⁶.

Women also require different hygiene and reproductive health facilities, which most Indian prisons are ill-equipped to provide. The needs of menstruating women, pregnant inmates, and lactating mothers are grossly unmet, despite guidelines from national and international bodies such as the Bangkok Rules (United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, 2010), which stress the importance of gender-sensitive prison management. These rules underline that women should receive adequate prenatal and postnatal care, and special attention should be paid to the children living with them

¹² *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police*. <https://www.hrw.org>

¹³ *Prison Statistics India*. Ministry of Home Affairs.

¹⁴ *Women in Prison: Gender and Institutional Change*. Sage Publications.

¹⁵ *Report No. 135: Women in Custody*.

¹⁶ <https://ciemn.org/wp-content/uploads/2024/05/India-Report-Finalized-Version.docx.pdf>

(United Nations Office on Drugs and Crime¹⁷.

The rise in women's incarceration also reflects broader societal trends. Women today are more educated, independent, and active in public life, yet they are simultaneously exposed to stress, social marginalization, and familial breakdown. These conditions make them more vulnerable to criminal behavior, often driven by poverty, illiteracy, domestic violence, and systemic gender bias¹⁸. In many cases, women who end up in prison are not hardened criminals but victims of structural oppression who lacked access to proper legal aid or were trapped in cycles of abuse and marginalization.

More than a century ago, the Indian Jail Committee (1919–1920) recognized the importance of gender-sensitive arrangements and recommended the construction of separate prisons or at least isolated wings within existing facilities for women prisoners. They envisioned a system where female inmates could move safely within the premises without the threat of being followed or harassed by male prisoners. Despite the progressive vision, the implementation has lagged dramatically. In most Indian states, female prisoners must pass through or be housed near male sections of the prison, increasing their exposure to potential abuse and trauma¹⁹.

Subsequent committees, including the All-India Jail Reforms Committee (1980–1983) led by Justice A. N. Mulla, reiterated these recommendations. They stressed the importance of not only segregating women prisoners but also classifying them based on the nature of the offense, age, and vulnerability. For instance, young women and first-time offenders should not be housed with hardened criminals or habitual offenders²⁰. Unfortunately, most state governments have not taken these recommendations seriously. As a result, women continue to suffer in conditions that are unsafe, unsanitary, and dehumanizing.

It is not uncommon for female prisoners to be under the supervision of male wardens, which raises significant concerns about their safety and privacy. Numerous reports submitted to national bodies, including the National Human Rights Commission (NHRC), indicate instances

¹⁷ *The Bangkok Rules: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.*

¹⁸ *Women, Prison and Reforms in India.* Eastern Book Company.

¹⁹ *Criminal Justice System in India: A Study.* Eastern Book Company.

²⁰ *Report of the All India Committee on Jail Reforms 1980–1983.*

of sexual harassment and exploitation of female inmates by prison officials²¹. Such abuses are underreported due to fear of retaliation and the stigma associated with incarceration. The existing grievance redressal mechanisms are often ineffective, inaccessible, or intimidating, especially for illiterate or rural women.

Another distressing issue is the socio-economic background of most incarcerated women. A majority come from marginalized communities, including Scheduled Castes, Scheduled Tribes, and Other Backward Classes. Many are from rural areas with low literacy rates and minimal legal awareness. These women often fall prey to systemic injustices, such as false accusations or the inability to afford bail or competent legal representation²². Once imprisoned, they become invisible to the system, forgotten not only by the state but sometimes by their own families.

Renowned criminologists have noted that women in prison are often the “disadvantaged losers in a competitive society,” caught between oppressive patriarchal structures and state indifference²³. Incarceration for these women does not end with their release. Reintegrating into society becomes a daunting challenge, as they face employment discrimination, social ostracism, and emotional alienation. The label of being an “ex-prisoner” haunts them indefinitely, complicating their attempts to rebuild their lives and support their families.

Recognizing these issues, the Mulla Committee had proposed a rights-based approach for women prisoners. This included ensuring access to basic amenities like clothing, bedding, medical care, safe drinking water, and the right to legal aid and meaningful employment opportunities. They also stressed the necessity of non-custodial measures, especially for minor offenses, and promoted alternatives like probation, community service, and rehabilitation.

Despite the detailed recommendations and frameworks like the Nelson Mandela Rules (United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015) and the Bangkok Rules, the implementation of these rights remains superficial in many Indian prisons. There is a dire need for continuous monitoring and evaluation to ensure that women prisoners are not reduced to mere statistics in criminal justice reports but are treated with dignity, empathy, and

²¹ National Human Rights Commission (NHRC). (2018). *Annual Report*.

²² *Gender, Crime and Punishment in India*. Routledge.

²³ *Women Behind Bars: Social and Legal Challenges*. *Journal of Gender Studies*, 8(2), 45-62.

fairness²⁴.

1.1.1 Prison Staff

For prisons to function effectively, it is essential to have adequate and specialized staff, including medical and other personnel, tailored to the specific needs of each facility. The *National Model Prison Manual, 2016* emphasizes the importance of maintaining a proper staff-to-inmate ratio, recommending one guarding staff member for every six prisoners (Bureau of Police Research and Development²⁵). However, as of 2015, there were only 4,391 female staff members across Indian prisons, making up just 8.28% of the total prison workforce. This highlights a significant shortage of female officers, particularly in supervisory roles. The Manual also recommends the appointment of women Deputy Inspector Generals (DIGs) in each state to oversee the management of women's prisons, their staff, and the female inmates. Addressing this issue, the Honorable Supreme Court of India in May 2017 observed that prisons across the country suffer from severe understaffing when compared to prescribed norms. The Court emphasized the urgent need to recruit more personnel to ensure prisons are run efficiently²⁶. In light of increasing female incarceration rates, the demand for female-only prisons, along with qualified, full-time female prison staff, has become more pressing than ever to ensure gender-sensitive and effective prison administration.

1.1.2 Health & Nutrition

Healthcare within the prison system is a fundamental necessity, not only in terms of access to treatment but also in ensuring that it is cost-effective, of high quality, and gender-sensitive. The government must make clear provisions for separate medical facilities for male and female inmates, recognizing their distinct healthcare needs (Bureau of Police Research and Development, 2016). It has been recommended that all incoming convicts should receive vaccinations as part of preventive healthcare measures. Special care is also essential for vulnerable groups within prisons, including elderly inmates and those with substance abuse issues (National Crime Records Bureau, 2015). A monthly medical inspection by the Chief Medical Officer or designated Medical Officer is necessary, along with routine daily check-ups. For women prisoners, healthcare should be administered by female medical professionals, especially in cases involving reproductive or mental health needs. The lack of women doctors,

²⁴ https://cdn.penalreform.org/wp-content/uploads/2021/12/BR_Guidance_Doc_English_Second_Edition.pdf

²⁵ *National Model Prison Manual 2016*. Ministry of Home Affairs, Government of India. <https://bprd.nic.in>

²⁶ *In Re-Inhuman Conditions in 1382 Prisons* (Writ Petition (Civil) No. 406 of 2013).

particularly gynecologists, remains a serious gap in prison healthcare systems (Mulla Committee Report, 1983). Women suffering from mental illness should not be placed in the general prison population but should be temporarily housed in specialized mental health units. Despite guidelines in state prison manuals addressing mental fitness, the situation continues to deteriorate due to insufficient infrastructure and attention (Ministry of Home Affairs, 2020). In 2015 alone, prisons reported 51 deaths among female inmates, including three suicides and 48 natural deaths, underlining the urgent need for better mental and physical healthcare²⁷.

Furthermore, female health, particularly reproductive health, requires targeted focus. The Ministry of Home Affairs has emphasized the need for rehabilitation that includes a shift in attitudes, behavior, and socialization of convicts to enable reintegration into society²⁸. To effectively meet the unique needs of female inmates, prison staff should receive specialized gender-sensitive training. Nutrition is another area of concern. While state prison manuals recommend specific caloric intake and mandate that one mess should serve no more than 100 inmates with three meals daily, implementation is inconsistent. Meals are to be served in clean, protected spaces with sufficient time for consumption. However, during prison inspections, disparities have been observed—female inmates are often given less food than their male counterparts under the guise of different nutritional needs. Additionally, unsanitary cooking and dining facilities have been reported, despite official claims of generally satisfactory food quality. Dining halls are frequently cited as the most neglected areas in prison infrastructure, even as the Ministry of Home Affairs continues to assess the implementation of the Mulla Committee's recommendations.

1.1.3 Sanitation

Sanitation and hygiene conditions in Indian prisons, particularly for women, are generally inadequate and continue to be a major concern. Although the *National Model Prison Manual 2016* recommends one washroom and one shower for every ten inmates, this guideline is rarely implemented effectively in practice (Bureau of Police Research and Development, 2016). The growing prison population has not been matched by improvements in basic infrastructure, leading to significant overcrowding and a shortage of toilet facilities. For female inmates, the situation is further complicated by poor placement and design of sanitation areas, often exposing them to the risk of sexual harassment or abuse due to proximity to male sections

²⁷ *Prison Statistics India 2015*. Ministry of Home Affairs, Government of India. <https://ncrb.gov.in>

²⁸ *Annual Report 2019–20*. Government of India. <https://www.mha.gov.in>

(National Crime Records Bureau, 2015). The Manual also notes that women inmates should be allowed as many baths or showers as they require to maintain hygiene²⁹.

One of the core reasons behind unhygienic conditions is the chronic lack of water supply in many prisons. This issue becomes particularly critical given that over 81% of female prisoners fall within the reproductive age group of 18–50, making access to menstrual hygiene products an essential requirement³⁰. Despite recommendations, the provision of sanitary napkins remains inconsistent and often neglected. Many women are forced to resort to unhygienic alternatives such as old cloth, ash, newspapers, or mattress scraps, putting them at high risk for infections and other health issues³¹.

To address this, strict enforcement of state prison sanitation guidelines and regular inspections are necessary. It has been suggested that prison authorities collaborate with local *Swachh Bharat Abhiyan* initiatives to build and maintain toilets that meet hygiene standards. Additionally, inmates can be trained to manufacture low-cost, eco-friendly sanitary products. Several NGOs and CSR initiatives currently distribute menstrual hygiene products free of charge, and expanding these efforts across state prisons could significantly improve conditions for women³².

1.1.4 Education

The *National Model Prison Manual 2016* (NPM) has recognized the importance of education as a fundamental right for prisoners and recommends that convicts be given the opportunity to pursue education, taking into account their prior educational background and individual capabilities (Bureau of Police Research and Development, 2016). Inmates who wish to continue their studies must have access to reading materials, and prisons should provide a conducive environment for learning. This includes the establishment of properly equipped classrooms and libraries to ensure that prisoners can study without unnecessary obstacles³³. Additionally, every state is encouraged to formulate and implement its own education policy specifically tailored for the prison population.

²⁹ *National Model Prison Manual*. Ministry of Home Affairs, Government of India. <https://bprd.nic.in>

³⁰ *Prison Statistics India 2015*. Ministry of Home Affairs, Government of India. <https://ncrb.gov.in>

³¹ *India Justice Report 2020: Ranking States on Police, Judiciary, Prisons and Legal Aid*. Tata Trusts. <https://www.indiajusticereport.org>

³² *Barred and Behind Bars: Women in the Indian Prison System*. <https://www.humanrightsinitiative.org>

³³ *Barred and Behind Bars: Women in the Indian Prison System*. <https://www.humanrightsinitiative.org>

Engagement in educational programs is also seen as a valuable tool for maintaining discipline and order within the prison environment. It not only supports the intellectual growth of inmates but also contributes to their rehabilitation and reintegration into society. A good academic record acquired during incarceration can significantly improve a former convict's chances of securing employment and leading a stable, productive life upon release. Therefore, prison education is not merely a reformative measure but also a vital component of ensuring long-term social reintegration and reducing recidivism.

1.1.5 Legal Aid and Help

The Indian Constitution firmly establishes the principle of equal justice for all. Article 39A mandates the provision of free legal aid to the poor and marginalized sections of society to ensure that justice is not denied due to economic or other disabilities. Furthermore, Articles 14 and 22(1) reinforce the idea of equality before the law and the right to legal representation, obligating the State to ensure that everyone has access to fair legal proceedings.

The Justice A.N. Mulla Committee (1983) outlined several critical legal rights that must be granted to prisoners, including: the right to consult and be represented by a lawyer of their choice; access to legal aid organizations; notification upon entry into prison about their legal rights related to appeal, revision, or review of their sentence; access to court records necessary for legal review; and the right to report violations of these rights to prison authorities or relevant legal bodies.

In support of these rights, the *Legal Services Authorities Act, 1987* was enacted to create a uniform and nationwide system for delivering free and competent legal services to vulnerable populations, including those in custody. Under this framework, prisoners are entitled to legal representation at no cost. The *National Model Prison Manual 2016* further mandates that every state government must appoint legal officers to visit prisons regularly, establish in-prison legal aid clinics, and promote legal literacy among inmates.

However, despite these progressive mandates, implementation remains weak. As observed by the National Human Rights Commission (NHRC) during visits to various prisons, many facilities lack functional legal aid cells, and a majority of inmates remain unaware of their legal rights or unable to access legal services (NHRC, 2016). To address these gaps, it is crucial that

state legal services authorities actively collaborate with prisons to ensure every inmate is aware of and able to exercise their legal rights.

1.1.6 Sexual Violence

The *National Model Prison Manual 2016* (NPM) clearly states that male staff should not be allowed access to women's wards unless absolutely necessary, and it mandates that female warders and senior female staff must be on duty at all times to safeguard the dignity and security of women inmates (Bureau of Police Research and Development, 2016). The Manual also provides that if a female prisoner needs to be transported—whether to court or another prison—she should be accompanied by a female relative or staff member. However, in practice, there have been multiple reports of women prisoners facing harassment, humiliation, or even sexual assault during such transfers (Commonwealth Human Rights Initiative, 2018).

Incidents of gender-based violence within prisons—whether reported by prison authorities or revealed through independent investigations—continue to occur across the country. However, the full extent of such abuse is often underreported due to fear of retaliation, as women inmates are frequently forced to continue living in proximity to their abusers (National Human Rights Commission, 2020). The NPM also stresses that women prisoners must have access to legal aid in situations of abuse and violence. Many prisons have installed complaint boxes, enabling inmates to submit grievances confidentially and in writing.

Moreover, the *Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013* includes safeguards for women in custody, recognizing prison as a workplace setting for inmates and thus protecting them under its provisions³⁴. It emphasizes the need for confidentiality in handling complaints, as public disclosure could defeat the very purpose of reporting and expose victims to further harm.

Despite these well-intentioned legal frameworks, significant implementation gaps remain. The Supreme Court of India has expressed concern over the increasing number of sexual abuse cases reported within prisons. The Court has directed all states to install CCTV cameras in all

³⁴ *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. <https://labour.gov.in>

jails to monitor daily operations and create a safer environment for inmates³⁵. While legal provisions exist on paper, true reform lies in their consistent and sincere enforcement.

1.1.7 Children

In India, women prisoners are permitted to keep their children with them in prison if there are no viable alternatives for their care. This provision typically applies to children under the age of six, although the exact age limit may vary across different states³⁶. As per recent records, there are approximately 1,597 women prisoners living in jails along with 866 children³⁷.

Recognizing the vulnerability of children in such settings, the Hon'ble Supreme Court of India, in its 2006 directive, emphasized that children residing in prisons are entitled to all essential rights and services. These include adequate nutrition, shelter, healthcare, clothing, education, and opportunities for recreation³⁸. This judicial intervention seeks to ensure that children, though born or raised in confinement, are not deprived of a nurturing and developmentally supportive environment.

1.1.8 Contact and resettle with the outside world after release.

According to the *National Model Prison Manual* (NPM), when a woman prisoner is released, it is mandatory that her family members, friends, or nearest relatives be informed of her release to help ensure a smooth reintegration into society (Bureau of Police Research and Development, 2016). The Mulla Committee further emphasized the importance of structured after-care to support women upon release. It recommended various measures such as home leave, placement in open prisons, use of halfway houses, and the establishment of community-based rehabilitation programs to aid in the transition from incarceration to normal life³⁹.

Additionally, some states have adopted schemes where financial stipends are provided to individuals released on parole, aiming to support their initial rehabilitation efforts (BPRD, 2016). Despite these provisions, comprehensive after-care programs remain scarce across the country. The lack of sustained post-release support often contributes to relapse into criminal behavior. Effective reintegration, therefore, requires not only legal and administrative

³⁵ *Order in Re: Inhuman Conditions in 1382 Prisons*. Writ Petition (Civil) No. 406 of 2013.

³⁶ *National Model Prison Manual*. Ministry of Home Affairs, Government of India. <https://bprd.nic.in>

³⁷ *Prison Statistics India 2022*. Ministry of Home Affairs, Government of India. <https://ncrb.gov.in>

³⁸ *R.D. Upadhyay v. State of A.P. & Ors.*, Writ Petition (Civil) No. 559 of 1994.

³⁹ *Report of the All India Committee on Jail Reforms 1980–83*. Government of India.

mechanisms but also community support systems that promote long-term social inclusion and reduce recidivism (National Crime Records Bureau, 2022).

2. Statutory Provisions Governing Women Prisoners in India

Women constitute a small fraction of the global prison population—ranging from approximately 2% to 8%—yet their incarceration presents unique challenges that are often overlooked within predominantly male-oriented prison systems, particularly in India⁴⁰. Historically, Indian prisons were conceptualized and structured to accommodate male inmates, with female prisoners being accommodated only through retrofitting existing male facilities, often without adequate provisions for their specific needs⁴¹. This has led to systemic neglect in providing women with necessary facilities, infringing upon their basic human rights and dignity⁴².

In recent years, the number of incarcerated women has been rising globally, and India mirrors this trend, with the rate of increase in female prisoners outpacing that of males in several jurisdictions⁴³. In over a dozen countries, including India, more than 10% of the convicted prison population are women, marking a significant demographic shift in criminal justice systems⁴⁴. This uptick in female incarceration has often been linked to the criminalization of low-level, non-violent offenses—especially drug-related crimes—that were previously penalized through non-custodial measures⁴⁵. Women's poverty and social marginalization are major contributors to their criminalization, as many lack the financial resources to pay bail or minor fines, leading to disproportionate pretrial detention⁴⁶.

Furthermore, the majority of incarcerated women come from socio-economically disadvantaged backgrounds and have experienced intersecting vulnerabilities such as domestic violence, sexual abuse, and homelessness prior to their imprisonment⁴⁷. The stigma

⁴⁰ *World female imprisonment list* (4th ed.). Institute for Criminal Policy Research.

⁴¹ Gender and penal reform: Assessing prison conditions for women in India. *Indian Journal of Criminology*, 49(2), 73–85.

⁴² *Incarcerated women in India: Rights, reforms and resistance*. *Economic and Political Weekly*, 54(8), 45–52.

⁴³ *Global prison trends 2022*. <https://www.penalreform.org>

⁴⁴ *Handbook on Women and Imprisonment*. Vienna: UNODC.

⁴⁵ *Gender and justice: Women in detention*. <https://www.unwomen.org/>

⁴⁶ *Bail and the marginalised: The cost of freedom in India*. Centre for Social Justice.

⁴⁷ Women and the prison system in India: A gendered perspective. *International Journal of Criminal Justice Sciences*, 16(1), 89–104.

surrounding female incarceration is particularly severe in patriarchal societies like India, where imprisoned women often face harsher societal judgment than their male counterparts⁴⁸.

The needs of women in prison differ considerably from those of men, necessitating gender-responsive prison reforms. Many incarcerated women are primary caregivers for their children and continue to shoulder domestic responsibilities from within prison walls⁴⁹.

Female prisoners also have specific healthcare needs, such as gynecological care, maternal health services, and mental health support, which are frequently unmet in prison settings⁵⁰. Pregnant women may be forced to give birth in custody without adequate medical attention, further compounding their trauma⁵¹.

In addition to overcrowding and unsanitary conditions—common to all prisoners—women face compounded difficulties due to limited visitation rights, inadequate sanitation, and lack of access to reproductive healthcare⁵². Special attention is also required for women belonging to vulnerable subgroups, such as juveniles, persons with disabilities, foreign nationals, and members of marginalized castes and indigenous communities, whose incarceration experiences are often marked by intersectional discrimination⁵³.

India's legal and constitutional framework is grounded in the principles of non-violence, human dignity, and equality. The incarceration of an individual, regardless of gender, does not nullify their personhood or strip them of fundamental rights. Prisoners retain certain basic rights, limited only by the constraints of imprisonment⁵⁴. The Indian judiciary has reaffirmed that torture or inhumane treatment is not a legitimate instrument of justice but rather a failure of the system to uphold basic human values⁵⁵.

International human rights frameworks, such as the **Universal Declaration of Human Rights (1948)**, and the **United Nations Rules for the Treatment of Women Prisoners and Non-**

⁴⁸ Women behind bars: A study on women prisoners in India. *Journal of Human Rights Practice*, 10(3), 210–224

⁴⁹ *Women in prison: A commentary on the UN Bangkok Rules*. Quaker United Nations Office.

⁵⁰ *Women's health in prison: Correcting gender inequity in prison health*. WHO Europe.

⁵¹ *Global prison trends 2022*. <https://www.penalreform.org>

⁵² *India: Prison conditions for women remain substandard*. <https://www.amnesty.org/>

⁵³ *Handbook on women and imprisonment (2nd ed.)*. Vienna: UNODC. Retrieved from <https://www.unodc.org>

⁵⁴ *Annual Report 2019-20*. New Delhi: NHRC.

⁵⁵ *Report of the Committee on Amendments to Criminal Law*. Government of India.

custodial Measures for Women Offenders (Bangkok Rules, 2010), have emphasized the importance of humane, gender-sensitive treatment of incarcerated women. The Indian Constitution, influenced by these global principles, enshrines the presumption of innocence until proven guilty (Article 21), ensuring that the rights of the accused are protected throughout the legal process.

In this light, it is imperative that the Indian prison system moves beyond merely accommodating women within male-centric structures and begins implementing meaningful reforms that uphold the dignity, health, and rights of female prisoners. Legal mandates alone are insufficient; they must be accompanied by strong implementation, oversight, and a commitment to equity and justice for all incarcerated individuals, irrespective of gender.

2.1 Prisoners Act 1894

The recognition that human dignity must be upheld, even in conditions of confinement, has led to the enactment of several legal frameworks worldwide. In India, despite its colonial past, multiple laws concerning criminal justice and prison management were introduced with the stated aim of ensuring proper treatment and rehabilitation of prisoners⁵⁶. These laws, including the **Borstal Schools Act**, the **Habitual Offenders Act**, and the **Civil Jails Act of 1874**, were designed to grant authorities control over prison administration and emphasize reformative over punitive approaches to incarceration⁵⁷.

In addition to central legislation, individual state governments have also enacted specific laws to address local prison management challenges and internal infrastructural needs. These legal enactments gave wide-ranging powers to executive authorities, including the President, regarding prison administration. Until the 1980s, even the judiciary refrained from interfering with prison governance, maintaining a largely deferential stance.

However, growing concerns over severe overcrowding, the prolonged detention of undertrial prisoners, unhygienic living conditions, lack of rehabilitative programs, and accusations of neglect or abuse by prison officials have led to increased scrutiny and criticism of the prison system (National Expert Committee on Women Prisoners, 1987). While several studies have

⁵⁶ *Gender issues and women prisoners in India*. Indian Journal of Gender Studies, 12(1), 111–126.

⁵⁷ *Report of the National Expert Committee on Women Prisoners (1986-87)*. Ministry of Human Resource Development.

analyzed the general state of prisoners and the legal structure governing their treatment, limited research has been dedicated specifically to the plight of women inmates (National Expert Committee on Women Prisoners, 1987).

Existing laws have proven largely inadequate in addressing the unique issues faced by incarcerated women and often overlook their dignity and gender-specific needs. The requirements of female prisoners—shaped by socio-economic background, prior trauma, reproductive health, and caregiving roles—vary significantly from those of men and necessitate specialized interventions⁵⁸ (Chaudhary, 2021). However, historically, prison legislation in India has treated women merely as part of a homogeneous category of "prisoners," without adequate attention to their gendered experiences. This could be due to the relatively small number of female inmates in earlier periods or a societal tendency to minimize female criminality.

One of the earliest laws governing prison administration in India is the **Prisons Act of 1894**, which remains a cornerstone of prison regulation. Though it was one of the first laws to mention prisoners' rights and the necessity for reform, it includes minimal provisions that specifically protect female inmates. The Act only contains two key provisions directly addressing the rights of women in prison⁵⁹.

The first is the **separation of prisoners**. Section 27(1) of the Prisons Act mandates that in any jail accommodating both men and women, female inmates must be confined in separate buildings or distinct parts of the same structure to prevent visual, verbal, or physical contact with male inmates. The goal is to avoid any opportunity for sexual activity or harassment, thereby ensuring the personal safety and dignity of women inmates. Additionally, the Act stipulates that convicted and unconvicted prisoners should be held separately, recognizing the principle of legal presumption of innocence.

The second gender-specific provision relates to **protection from fellow inmates**, especially during the intake process. Section 24(3) of the Prisons Act requires that all incoming prisoners must be searched before admission to prevent the smuggling of contraband or harmful items.

⁵⁸ *Women and the prison system in India: A gendered perspective*. International Journal of Criminal Justice Sciences, 16(1), 89–104.

⁵⁹ <https://nhrc.nic.in/sites/default/files/11%2520Rights%2520of%2520Prisoners-compressed.pdf>

Importantly, when it comes to female prisoners, the search must be conducted by a female officer—specifically, a *Matron*—and only under the direction of the Medical Officer. This provision acknowledges the need for procedural sensitivity and privacy while dealing with women.

Despite these limited safeguards, the legislation reflects the correctional thinking of its time rather than contemporary human rights standards. There is little mention of reproductive healthcare, psychological support, or child care—all of which are essential aspects of gender-responsive imprisonment today. While the **Prisons Act of 1894** initiated a legal framework for reform, it remains inadequate in addressing the complexities of women's incarceration in the 21st century.

2.2 Constitution of India, 1950

India is recognized for having one of the most progressive constitutions in the world, incorporating numerous provisions aimed at achieving gender equality and empowering women. Although incarceration restricts certain liberties in the interest of broader societal order, fundamental rights are not entirely extinguished. Even while imprisoned, individuals retain their status as "persons" and are thus entitled to constitutional safeguards under Part III of the Indian Constitution⁶⁰. Among these, Article 21 guarantees the right to life and personal liberty and protects individuals from cruel, inhuman, or degrading treatment, regardless of citizenship status. Any violation of this right is subject to scrutiny under Article 14, which ensures equality before the law and equal protection of the laws.

Article 14 has guided judicial interpretation through principles of reasonable classification and equal treatment among similarly situated individuals, including prisoners⁶¹. The Preamble of the Constitution further reflects India's commitment to justice, liberty, and equality for all, regardless of sex or status. This intent is reinforced through substantive provisions in the Constitution's main body aimed at the welfare of women and children.

Specifically, Article 15(1) prohibits discrimination on grounds such as sex, caste, race, religion, and place of birth⁶². Importantly, Article 15(3) empowers the state to make special provisions

⁶⁰ *Introduction to the Constitution of India* (20th ed.). LexisNexis.

⁶¹ *The Constitution of India*. Universal Law Publishing.

⁶² <https://www.constitutionofindia.net/articles/article-15-prohibition-of-discrimination-on-grounds-of-religion-race-caste-sex-or-place-of-birth/>

for women and children, allowing the implementation of gender-specific legislation without breaching the equality principle. The Rajasthan High Court upheld this in *Choki v. State of Rajasthan*, where provisions tailored for women were found consistent with Article 15(3)⁶³.

Further, Article 16 guarantees equal opportunity in public employment, forbidding discrimination based on sex or other constitutionally impermissible grounds. Article 23 prohibits human trafficking and all forms of forced labour, including practices such as beggary, with violators subject to legal penalties. It also permits compulsory service for public purposes, provided there is no discrimination based on religion, caste, or class.

Throughout these provisions, the terms "citizen" and "person" are inclusive of all genders, affirming that men and women should have equal access to fundamental rights even while imprisoned. This principle is particularly vital when evaluating the treatment of female inmates, who should not be deprived of basic constitutional guarantees.

In Part IV, the **Directive Principles of State Policy** further direct the state to prioritize women's welfare. Article 39 mandates the state to ensure equal rights to an adequate means of livelihood, equal pay for equal work, and protection against the exploitation of both men and women, as well as children. Article 39A emphasizes equal access to justice by obligating the state to provide free legal aid to citizens unable to afford legal representation, thus ensuring that economic barriers do not hinder justice.

Additionally, Article 51A(e) under the Fundamental Duties imposes a moral obligation on citizens to renounce practices derogatory to the dignity of women⁶⁴. While the Constitution bestows specific protections and privileges for women generally, it does not expressly outline rights exclusive to incarcerated women. The only provision that indirectly safeguards female prisoners is Article 15(3), which authorizes the enactment of protective measures for women and children. Hence, it is imperative that legislative and correctional systems implement this constitutional assurance through specific laws and prison policies that address the unique needs and vulnerabilities of female inmates.

⁶³ *Choki v. State of Rajasthan*, AIR 1957 Raj 10.

⁶⁴ <https://www.linkedin.com/pulse/bridging-article-51ae-posh-act-corporate-offices-legasispvltld-2etoc>

2.3 **Bhartiya Nagarik Suraksha Sanhita, 2023**

The primary objective of the *Criminal Procedure Code (CrPC)* has traditionally been to establish a structured framework for the prevention and investigation of crime, including mechanisms such as the arrest of suspects, the collection of evidence, and ensuring procedural fairness in criminal trials. The CrPC aimed to strike a balance between the powers of law enforcement agencies and the rights of the accused. While it does provide general procedural safeguards for individuals involved in the criminal justice system, it historically lacked a nuanced or gender-sensitive approach to women accused or convicted of crimes.

The newly enacted *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)*⁶⁵, which replaces the CrPC, continues to uphold the core procedural values but has made certain progressive amendments, particularly regarding the treatment of women.

- **Section 42(2)** of the BNSS, 2022 clearly prohibits the arrest of a woman after sunset and before sunrise, except in exceptional circumstances, and even then, only with the prior permission of a Magistrate. This provision is a reaffirmation of gender sensitivity during enforcement procedures.
- **Section 50(1)** of the BNSS mandates that when a woman is to be searched, the search must be made by another woman with strict regard to decency, now refined for clarity.

Despite such safeguards, there remains a lack of comprehensive recognition of women as a distinct category requiring differentiated procedural protection across all stages of criminal justice—from arrest to incarceration.

The BNSS still falls short in institutionalizing broader gender-specific protections or reform-oriented practices for women convicts. Female prisoners continue to face systemic challenges owing to their socio-economic vulnerabilities and gendered roles in society, including caregiving responsibilities and health concerns. While the legal framework offers piecemeal protections, there is an urgent need for a more holistic and integrated approach that recognizes women in conflict with the law as a distinct and sensitive category. Policymakers must ensure that gender-specific provisions are implemented effectively at every level of the criminal justice system, from investigation and arrest to sentencing and rehabilitation.

⁶⁵ *Bharatiya Nagarik Suraksha Sanhita, 2023*. Ministry of Law and Justice. <https://egazette.nic.in/>

3. Conclusion

Despite the existence of various national and international legal frameworks aimed at protecting women prisoners, the actual conditions inside Indian prisons reflect significant gaps in implementation. Most incarcerated women in India are either illiterate or lack legal awareness, making them vulnerable to rights violations. While the **Constitution of India** under **Article 21** guarantees the right to life and personal liberty—extending even to prisoners—women inmates often face denial of basic human needs such as food, sanitation, health care, and privacy⁶⁶.

Though **Article 15(3)** empowers the State to make special provisions for women, there are very few gender-specific reforms in prison laws. The **Prisons Act of 1894**, which still governs most Indian prisons, is outdated and lacks focus on rehabilitation and protection of women inmates. It only provides minimal provisions for separation from male prisoners (Section 27) and for being searched by a female matron (Section 24), offering little else in terms of dignity or reform.

Women inmates often face challenges such as lack of gynecological care, inadequate facilities for pregnant and lactating mothers, and no structured post-release rehabilitation plans. Despite Supreme Court directions such as in *R.D. Upadhyay v. State of A.P.* (2006)⁶⁷ calling for proper prenatal and postnatal care, separate accommodations, and facilities for children of women prisoners, implementation remains sporadic.

Additionally, many incarcerated women come from marginalized rural backgrounds, are unaware of their rights, and are often first-time offenders or victims of circumstances. The **National Expert Committee on Women Prisoners (1986–87)** highlighted these issues decades ago, yet reforms have been slow and inconsistent. Mental health care, legal aid, vocational training, and reintegration support remain largely absent or underdeveloped⁶⁸.

The **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, attempts to modernize procedural law but still lacks substantial gender-sensitive protections for accused or convicted women.

⁶⁶ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

⁶⁷ *R.D. Upadhyay v. State of A.P.*, AIR 2006 SC 1946.

⁶⁸ National Commission for Women. (2020). *Status of Women Prisoners in India*.

Without systemic reforms, mere legal recognition of rights is insufficient⁶⁹. What women prisoners need is not just incarceration, but restorative justice, holistic rehabilitation, and respect for their dignity as enshrined in constitutional and international human rights standards.

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⁶⁹ <https://academic.oup.com/jrs/article/27/2/260/1579930>