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A Gender Sensitive Legal Study on the Protection of Human Rights of Women Prisoners under the Constitutional Law and relevant Laws

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ABSTRACT

This study critically looks at how the Indian legal system safeguards female prisoners' human rights. Through a gender-sensitive lens, it looks at court decisions, constitutional provisions, and statutory protections for female inmates. Through an analysis of the systemic issues that imprisoned women face, including physical abuse, inadequate healthcare, lack of privacy, and separation from children, this paper seeks to identify legal flaws and propose reforms that are consistent with India's constitutional mandate and international commitments.

Keywords: *Women Prisoners, Human Rights, Constitution of India, Gender-Sensitive, Prison Reforms, Legal Protection, Judicial Activism.*

I. INTRODUCTION

Prisons reflect the biases and power dynamics of the societies in which they are constructed, and in India, these hierarchies are pronouncedly gendered. Despite making up only 5% of the nation's prison population, women's needs—from menstrual hygiene and reproductive health care to caring for dependent children—remain largely unmet in facilities built by and for men. Women in prison frequently suffer from violations of their basic human rights as a result of this invisibility, including claustrophobic, public wards, inadequate prenatal and postpartum care, elevated risks of sexual abuse, and procedural barriers to bail or parole that unjustly penalize caregiving duties.

Because Articles 14, 15, and 21 collectively demand substantive equality and a dignified life for all people, including those incarcerated, a gender-sensitive study of incarceration is not just an academic exercise but rather a constitutional requirement. The majority of empirical and doctrinal research conducted in India, however, continues to treat prisoners as a homogenous

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group, neglecting to examine the ways in which laws, prison manuals, and courtroom procedures interact with patriarchal norms to cause particular harms for female inmates. This essay aims to close that gap.

The research uses a doctrinal and comparative perspective in its methodology. It examines key rulings from the Supreme Court and High Courts, as well as constitutional language and legislative legislation such the Prisons Act of 1894 and the Model Prison Manual of 2016. To assess India's adherence to its treaty responsibilities, these domestic sources are compared to international norms, particularly CEDAW and the UN Bangkok Rules. In order to show how laws work—or don't—in reality, the paper also, if feasible, uses data from the National Crime Records Bureau (NCRB) and firsthand reports from fact-finding expeditions.

Literature review:

Abdul Mateen's³, critically interrogates the gendered dimensions of incarceration in India, arguing that traditional criminological frameworks have long ignored the structural realities of women prisoners. He highlights a gradual but significant increase in female incarceration—from 5.4% in 2001 to 6.2% in 2011—as evidence that the notion of crime as a male-dominated sphere is no longer tenable. Mateen attributes this rise to socio-economic transformations such as urbanisation, industrialisation, and the growing feminisation of labour, noting that many incarcerated women are young, poor, uneducated, and unable to afford bail—conditions that criminalise poverty rather than address its root causes. The study documents severe deficiencies in prison conditions, including overcrowded and unhygienic cells, inadequate gynaecological and psychological care, sexual exploitation by staff, and the lack of facilities for the hundreds of infants cohabiting with their mothers in prisons, especially in states like West Bengal. Despite there being over 1,300 prisons in India, only 32 are exclusively for women, exacerbating logistical and emotional barriers to family visits and rehabilitation. Mateen underscores that India's prison infrastructure and legal frameworks remain fundamentally male-centric, and advocates for a gender-responsive overhaul incorporating the U.N. Bangkok Rules, institutional reforms, dedicated health services, and budgetary allocation aimed at fulfilling the constitutional promises of equality, dignity, and non-discrimination enshrined in Articles 14, 15(3), and 21 of the Indian Constitution. His research forms a critical foundation for gender-sensitive prison reform and aligns closely with both domestic constitutional mandates and international human rights obligations.

³ Abdul Mateen, "Behind Bars: An In-Depth Analysis of Women Prisoners in India", (2024).

Jyoti Punwani's article⁴, elucidates the gendered dynamics of female incarceration in India by highlighting that women—though only around 4% of the prison population—are frequently convicted for crimes stemming from familial oppression, such as retaliating against dowry harassment or escaping abusive relationships, and are often incarcerated as accomplices in male relatives' offenses. Punwani underscores that the rising rate of women's imprisonment in India (doubling relative to global increases between 2000–18) belies a deeper, systemic conundrum: women offenders are often “no different from the woman next door,” yet suffer penalties for acts rooted in domestic violence and financial necessity. She exposes the institutional neglect and normalization of casual sexual abuse in prisons, alongside the denial of basic legal rights, which not only violate democratic and human-rights ideals but also reflect how familial norms both drive women to crime and fail to shield them from carceral mistreatment. Punwani's review of essays in *Women, incarcerated: Narratives from India* powerfully illustrates that jails—designed without gender sensitivity—empower neither rehabilitation nor justice, thereby demanding a critical re-examination of legal protections, custodial practices, and legislative reforms to uphold women inmates' dignity and constitutional rights.

The article by Dhrubo Jyoti & Roshni Nair⁵ provides powerful qualitative insight into the lived realities of women prisoners, drawing on testimonies from former inmates who recount harsh conditions in Indian jails. Women narrate being denied basic hygiene and nutrition, receiving as few as six sanitary napkins a month and one bar of soap, and lacking access to essential healthcare, including for menstruation and pregnancy. These testimonies highlight the systemic neglect that characterizes the treatment of incarcerated women, despite guidelines under the Model Prison Manual, 2016. The article also notes a severe shortage of female staff, leading to situations where male guards are present during intimate activities, thus creating environments that compromise privacy and elevate risks of abuse. Former inmates speak of frequent beatings and a “climate of terror,” illustrating the psychological toll that custodial violence takes on women detainees. This report strengthens the argument that prison administration in India remains insensitive to the specific needs and rights of women, thereby calling for urgent reforms in alignment with constitutional guarantees under Articles 14, 15(3), and 21, as well as international standards such as the UN Bangkok Rules.

The 2009 SAGE-published study⁶, “Human Rights of Women Prisoners in India” offers an

⁴ Jyoti Punwani, “Women, incarcerated: how women fare in Indian jails”, *Mint* (Jun. 17, 2022).

⁵ Dhrubo Jyoti & Roshni Nair⁵, “Tales from former inmates: What life is like in a women's jail in India”, *Hindustan Times*, (July 3, 2017).

⁶ Anupama Kaushik & Kavita Sharma, “Human Rights of Woman Prisoner in India: A Case Study of Jaipur prison for woman”, *Indian J. Gender Stud.*, Apr.–June 2009.

empirical and critical examination of the conditions in Jaipur Central Prison, surveying 150 female convicts to reveal systemic violations of basic human rights and dignity within women's incarceration—a microcosm of national patterns.¹ The authors provide disturbing quantitative evidence that institutional provisions for hygiene, healthcare, and child welfare are grossly inadequate; for instance, basic amenities were found to be severely lacking, and prisoners regularly expressed fear of punitive staff behaviour.² The study notes an urgent need for attitudinal reforms among prison personnel to respect the human rights of female inmates, echoing broader critiques in feminist legal scholarship concerning patriarchal bias in carceral institutions. By situating these findings within the larger discourse on constitutional protections under Articles 14, 15(3), and 21 of the Indian Constitution, as well as India's international obligations, the study underscores that without gender-sensitive structural reform, prisons will continue to undermine rather than uphold the rights and dignity of women behind bars.

II. PROBLEMS FACED BY FEMALE PRISONERS IN INDIA

The condition of women prisoners in India raises significant concerns about human rights, basic dignity, and gender-sensitive prison reforms. According to data from 2016, over three lakh women were arrested under the *Bhartiya Nyaya Sanhita* (BNS) and various Special Laws. Among the incarcerated female population, approximately 50.5% belonged to the 30–50 age group, while 31.3% were between 18–30 years old, indicating that a large majority were in their most active and vulnerable phases of life.

Although prison-related issues are sensitive worldwide, the administration and conditions of correctional facilities vary greatly across countries. In India, every state follows its own prison manual, which outlines the rights and responsibilities of inmates—documents that, ideally, should be introduced to prisoners upon their entry. However, the lived experiences of many incarcerated women reveal systemic neglect and widespread violation of these rights.

This section outlines the major challenges faced by female prisoners in India:

A. Overcrowded and Inadequate Living Conditions

One of the most pressing issues in Indian prisons is severe overcrowding, affecting both male and female inmates. As per the National Prison Manual, barracks should ideally accommodate only 20 prisoners, while dormitories are meant for just four to six individuals. In reality, these numbers are grossly exceeded, resulting in compromised hygiene, increased disease transmission, and deteriorating mental health. A shortage of toilets and bathing facilities worsens the situation further.

Although legal guidelines mandate separate accommodations for undertrial and convicted prisoners, this distinction is often impossible to maintain due to space constraints. Young female offenders (aged 18–21) are frequently housed with older inmates, exposing them to negative influences and increasing their chances of becoming repeat offenders. Additionally, children living with their incarcerated mothers suffer from cramped, unsanitary, and unsafe environments.

B. Lack of Basic Sanitation and Menstrual Hygiene

A significant portion—over 80%—of female prisoners in India fall within the menstruating age group (18–50 years), making access to proper menstrual hygiene products and sanitation facilities a basic necessity. However, in many prisons, sanitary pads are either distributed in limited quantities or sold to inmates, making them inaccessible for those who cannot afford them. As a result, women are often forced to use unhygienic alternatives such as old cloth, newspaper, or even mattress stuffing, which poses serious health risks. The absence of gender-sensitive infrastructure and support systems in prisons highlights a glaring gap in prison policy and implementation.

C. Inadequate Healthcare and Welfare Spending

The financial allocation for inmate welfare in India remains alarmingly low. As per NCRB data from 2005, the average annual spending per inmate was merely ₹10,800—covering essentials like food, clothing, medical care, education, and rehabilitation activities. In stark contrast, in countries like the United States, the annual expenditure per state prisoner was about \$22,650 in 2001, which often included staff salaries and comprehensive health services.

While some Indian states such as West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar, and Delhi reported relatively better spending on medical facilities, others like Bihar, Karnataka, and West Bengal focused more on vocational and educational programs. States like Tamil Nadu, Odisha, and Chhattisgarh were noted for investing relatively more in inmate welfare programs. Despite these regional differences, the overall spending remains insufficient to ensure proper healthcare, rehabilitation, and reintegration support for female inmates.

D. Custodial Sexual Abuse and Rape

One of the most disturbing issues faced by women in prison is the threat of custodial sexual abuse. A landmark case, *State of Maharashtra vs. C.K. Jain*, highlighted the brutal reality of rape within police custody. The Supreme Court, in its judgment, emphasized that the victim's testimony should be taken seriously unless it is clearly unreliable. The Court also noted that a delay in filing a complaint should not be seen as suspicious, as women may fear retaliation or

social stigma.

The Court firmly ruled that leniency in such cases is inappropriate and that punishments should be exemplary to deter future violations. This judgment reflects the judiciary's recognition of the seriousness of custodial crimes and the need for systemic reforms to protect vulnerable female inmates.

The challenges faced by female prisoners in India—ranging from overcrowding and poor sanitation to inadequate healthcare and threats of sexual abuse—point to the urgent need for reforms rooted in gender sensitivity and human dignity. Ensuring proper infrastructure, access to healthcare, menstrual hygiene products, and strict enforcement against custodial crimes is essential in upholding the constitutional and human rights of women behind bars. Real change will require not just legal amendments, but also political will, societal awareness, and continuous monitoring of prison conditions across the country.

III. ANALYSIS OF JUDICIAL INTERPRETATION

The judgment in *State of Maharashtra vs. C.K. Jain*⁷ marks a critical turning point in the legal approach to custodial crimes, particularly custodial rape. Through its detailed interpretation, the Supreme Court demonstrated a progressive and empathetic understanding of the power dynamics and psychological trauma involved in such cases. The Court rightly recognized that expecting corroborative evidence in cases of custodial rape is often unrealistic, especially when the perpetrator is a state authority figure, and the victim is in a helpless position.

By emphasizing the credibility of the victim's testimony, the Court shifted the traditional evidentiary expectations that have historically disadvantaged victims of sexual violence. It acknowledged the inherent difficulties in proving such crimes and discouraged undue reliance on external corroboration, unless the testimony is clearly untrustworthy. This approach reflects a shift from a traditionally patriarchal and sceptical lens to a more victim-centered framework of justice.

Moreover, the Court's observation that women are unlikely to fabricate allegations of rape—particularly against police officials—helps dismantle the unjust assumption that women misuse rape laws. The decision to treat delays in filing complaints with sensitivity and understanding further demonstrates the Court's cognizance of the psychological toll and fear of reprisal that victims face.

The Supreme Court's reversal of the acquittal and its insistence on strict punishment sends a

⁷ AIR 1990 SC 658.

strong message about accountability within law enforcement. This case not only set a legal precedent but also reinforced the importance of protecting the fundamental rights and dignity of individuals in state custody, particularly women who face compounded vulnerabilities due to gender.

In essence, the judicial interpretation in this case serves as a cornerstone for future jurisprudence on custodial violence. It underlines the responsibility of the state to ensure that justice is not only done but is also perceived to be done—especially when the state machinery itself is the accused. The ruling also laid the groundwork for broader discussions on prison reforms and the need for institutional mechanisms to prevent abuse of power by custodians of law.

IV. RECOMMENDATIONS

The following suggestions are put out to guarantee fair, compassionate, and gender-sensitive prison changes in light of the difficulties and problems with the treatment of female inmates in India, as well as court rulings and expert committee findings:

- **Awareness of Legal Rights:** When female detainees are admitted to the jail, they should be made fully aware of their legal rights and privileges. Among these are the rights to healthcare, legal help, and communication with their families and legal counsel.
- **Gender-Sensitive Staffing:** Only female staff are permitted to perform any operations that require personal contact with or medical evaluations of female inmates. To maintain dignity and stop abuse, female constables should conduct searches and certified female doctors should conduct medical examinations.
- **Contact with Family and Legal Representatives:** Regular and meaningful contact between inmates and their families, particularly their children, should be allowed. In order to help their emotional health and rehabilitation process, they should also have access to social workers, legal aid, and accredited nonprofit groups.
- **Mother-Child Provisions:** According to current laws, female prisoners should be permitted to keep their children in jail with them until a specific age. Ensuring the physical and emotional development of these youngsters requires the establishment of appropriate childcare facilities and support networks.
- **Sanitation and Menstrual Hygiene:** All female convicts must have access to enough clothing and sanitary pads, among other hygiene supplies. Sanitation and menstrual health must be viewed as essential healthcare needs rather than as a luxury.

- **Special Legal Support:** Women inmates should have dedicated prosecutors or legal counsel assigned to represent and assist them in court, especially in delicate circumstances like sexual assault or abuse while in custody.
- **Reintegration-Oriented Reforms:** Regular furloughs and parole for qualified prisoners can promote rehabilitation and lessen the stigma associated with incarceration. By fostering stronger social support networks and family relationships, these activities help prisoners get ready for reintegration into society.
- **Sympathetic Handling of Victims of Sexual Offences:** Sensitivity and consideration must be shown to female inmates who have been sexually assaulted. As emphasized in *R.D. Upadhyaya v. State of Andhra Pradesh*.⁸, their children, particularly those born in prison, should be afforded full civil rights and their birth certificates should not list "prison" as the site of birth.
- **Differentiated Custodial Treatment:** Prisoners should be clearly categorized and segregated according to their age, the type of offense they committed (first-time, habitual, political, etc.), and their mental health. Hardened criminals must be kept from influencing or harming young and vulnerable prisoners.
- **Scientific Classification of Inmates:** Inmates must be categorized using a methodical process that takes into account their educational background, psychiatric evaluation, type of offense, and prospects for rehabilitation. This will assist in customizing reformation tactics for every person.
- **Provision for Compensation and Legal Redress:** Inmates who are harmed as a result of illegal detention or carelessness on the part of prison officials should be specifically compensated under prison legislation. Inmates should be able to report infractions and promptly seek correction through established mechanisms.
- **Monitoring and Accountability:** To guarantee adherence to human rights norms, independent monitoring organizations ought to regularly audit women's prisons. It is necessary to establish accountability systems to deal with wrongdoing or carelessness on the part of jail personnel.

A glaring contradiction exists in India's incarceration of women: although the Constitution ensures that everyone is treated equally, with dignity, and without prejudice, the lived experiences of female inmates reveal systemic insensitivity and gender insensitivity. Through

⁸ AIR 2006 SUPREME COURT 1946

a gender-sensitive legal perspective, this research has examined how India's institutional and legislative framework frequently falls short of protecting the human rights of women incarcerated. Women experience disproportionately harsh conditions, such as overcrowding and filthy surroundings, poor access to healthcare and menstrual hygiene, systemic sexual abuse, and disruption of mother responsibilities and family life, even though they make up a small percentage of the jail population.

Both legal potential and institutional inadequacies are revealed by examining constitutional provisions, including Articles 14, 15(3), and 21; judicial rulings, such as *State of Maharashtra vs. C.K. Jain*⁹; and international norms, such as the UN Bangkok Rules. Although the Indian judiciary has occasionally taken a progressive and sympathetic stand against women's rights and custodial assault, these actions are nonetheless fragmented and unevenly implemented.

The data put forward, which includes government records, scholarly works, and firsthand accounts, clearly emphasizes the necessity of swift, comprehensive, and gender-sensitive reforms. These must go beyond surface-level infrastructure improvements to include gender-aware staffing and procedures, child support networks, healthcare, basic cleanliness, legal empowerment of female inmates, and procedures for accountability and legal redress.

In the end, prisons should be places where the most disadvantaged people, particularly women, are fully protected by the law, not places where constitutional guarantees are broken. In addition to legislative changes, a fundamental change in the mentality of the carceral system—from punitive isolation to rehabilitative inclusion, from patriarchal oversight to participatory justice—will be necessary to realize this vision. In order to guarantee that no woman is denied her dignity merely because she is incarcerated, India must first bring its criminal policies into line with its constitutional principles and international human rights obligations.

V. CONCLUSION

Through a gender-sensitive legal lens, this study critically examined the human rights issues that Indian women inmates experience, paying particular attention to international norms, statutory frameworks, judicial interventions, and constitutional protections. The lived circumstances of women who are incarcerated reveal a stark discrepancy between legislative promises and actual practices, even in light of the Indian Constitution's guarantees of equality (Article 14), non-discrimination (Article 15), and the right to life and dignity (Article 21).

India's female inmates deal with a variety of issues that are frequently disregarded because of

⁹ AIR 1990 SC 658.

the country's male-centric penal system. Inadequate healthcare and nutrition, custodial sexual abuse, crowded and unsanitary living conditions, lack of access to basic sanitation and menstrual hygiene products, and the psychological trauma of being separated from children are the main problems. Further suffering is added when women inmates' mental and physical weaknesses are not taken into account, or when undertrial and convicted women are not distinguished. Women are further isolated inside the criminal justice system due to limited access to legal representation and a lack of knowledge about their legal rights.

The study suggests a number of rights-based and gender-sensitive solutions. These include educating prisoners about their legal rights, making sure that women are present for private operations, offering proper healthcare and menstruation care, bolstering legal help and counseling, and allowing contact between family members and children. Additionally, it is essential to categorize criminals objectively, offer impartial monitoring of jail conditions, and distinguish treatment according to age, criminal history, and psychological state. Incorporating mechanisms for compensation and legal remedies for human rights breaches is equally crucial.

This study emphasizes how jails frequently perpetuate structural injustices, particularly against women, and are by no means gender-neutral establishments. In addition to undermining female prisoners' chances of rehabilitation, the lack of gender-responsive staff, rules, and facilities also directly violates the Indian Constitution and international commitments such as the UN Bangkok Rules.

More than simply administrative changes are needed to reform the Indian jail system; a fundamental change in the way that punishment and rehabilitation are seen is also necessary. Particularly for women who are already oppressed by socioeconomic, cultural, and family inequalities, carceral places must respect dignity and justice.

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