

**BEHIND CLOSED BARS: SHEDDING LIGHT ON THE HIDDEN REALITIES OF
FEMALE INCARCERATION IN INDIA**

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Abstract:

Women in Indian society hold a pivotal role, making essential contributions to the societal structure. The state is also responsible for upholding the rights conferred on the Women, including those of female inmates in India. Despite the existence of various rights aimed at enhancing their social position, Women often remain unaware of these rights due to limited access to education and the prevalence of patriarchal norms. This research paper examines the conditions of female prisoners and identifies areas for improvement to address similar potential issues. It also discusses the prisoners' rights outlined in the constitution of India and the challenges that female prisoners encounter. The present paper also offers appropriate recommendations for strengthening the Nation's prison administration, taking into consideration that female inmates should be treated with specific emphasis and ensure that the inmates' safety, both in terms of physical and mental health, is not compromised within the correctional facilities.

Key words: Correctional Facilities, Female Inmates, Indian Constitution, Prison Administration, Social Position.

I. Introduction

A Correctional institution or detention center is a place where individuals are involuntarily incarcerated and deprived of numerous liberties under the legal control of the state, as a means of retribution. Prisons are primarily utilized within the context of the legal system for addressing criminal activities, where individuals who have been formally accused or convicted of offenses are detained in such facilities until they either undergo a trial to ascertain their culpability or serve the duration of their incarceration as determined by their trial's verdict. According to the provisions of the Constitution¹, the matter of "prisons" and "individuals detained within them" falls under the jurisdiction of the respective State governments. The state government is solely responsible for the management of prisons and supervision of the management of criminals, which has the authority to enact the necessary laws in this field. Nevertheless, recognizing the pivotal role that effective prison management plays in the legal system for addressing and managing criminal cases., the Government of India places significant importance on assisting the States and Union Territories in this area.

"The Ministry of Home Affairs" (MHA) has developed the "2023 Prison Reform Act", designed to replace the earlier British-era "Prisons Act of 1894". This legislation seeks to revamp the prison administration, prioritizing inmate reformation and rehabilitation. The '2023 Prison Reform Act' seeks to revamp the way prisons are managed, aid in the rehabilitation of inmates for their successful reentry into society and place a stronger emphasis on the safety and welfare of female and transgender prisoners. It also aims to introduce transparency in prison operations and provide processes for the improvement and reintegration of inmates.

Some elements of the new law were developed by the Bureau of Police Research and Development (BPRD) in collaboration with state prison officials and corrections officers, comprise the following: "Security assessment and segregation of prisoners; individual sentence planning, grievance redressal, prison development board, attitudinal change towards prisoners, separate accommodation for women prisoners, transgender, and punishment for punishment for prisoners and jail staff for use of prohibited items like mobile phones, inside prison premises". Given the current circumstances, it is critical to understand and value the rights that are available to women prisoners. While there are sufficient

¹ The Constitution of India, 1950.

requirements for the health and care of the kid, women in prison also live with their young children who are under the age of six. Women need to be handled differently than males since they have different needs for personal hygiene and sanitation. Pregnant women's health is also a major concern. The situation of women inmates in India is a problematic situation because they are either being tried or convicted, which causes several problems such as overcrowding in prisons and a lack of funding to provide the women with adequate sanitation facilities. Additionally, there are more prisoners as compared to the staff members in the prisons, it leads to numerous problems such as conflict, poor management in the prisons, etc. There are also certain incidents that show that there have been custodial rapes and custodial deaths because of lax security in the jail system.

II. Research Methodology

The data used in this study was obtained through a combination of firsthand documents and interpretive sources, each contributing valuable insights to the research.

a. **'Maharashtra State Commission for Women', Bandra [MSCW]:** MSCW holds a central role as a primary data provider. The organization has provided compiled reports and data pertaining to legal matters and women's issues concerning female prisoners in the state of Maharashtra, with a specific focus on the case of Kum. Manjula Shetye versus the State of Maharashtra. The data was collected throughout the researcher's one-month tenure within the State Commission.

b. **National Crime Records Bureau Portal:** This portal is a central repository of crime statistics in India and provides data regarding the Prisoners in India.

Secondary data was collected through various methods, including group discussion, case studies, news articles, media, and online research papers.

This research aims to understand the problem by combining different sources, challenges, and developments concerning Women's rights and their legal status in India.

III. Historical Background

Over the course of India's colonial history and up to the present, significant evolutions have taken place in the way Women prisoners are handled. During the colonial era, women who committed crimes, regardless of their gravity, were subjected to harsh punishments like flogging, lashing, and enforced labor, which were characterized by their cruelty and degradation. Isolation of prisoners in solitary confinement, often resulted in severe mental health issues, was commonly employed on women prisoners.

In 1870, the city of Mumbai (formerly known as Bombay) established its inaugural correctional facility for women in India. Initially designed to house both male and female inmates, it was referred to as the Byculla Jail. Nonetheless, a dedicated correctional facility for female prisoners, named the Mahila Prison, was erected in 1896. The Indian authorities frequently established a range of committees, commissions, and task forces to investigate and offer suggestions for institutional and structural improvements within correctional facilities.

The 1920 Jail Committee, officially known as the Indian Jails Committee of 1919-20, was a committee established by the British colonial government in India to examine and make recommendations. While the committee focused primarily on the overall functioning of the prison system in the country, it also made specific recommendations for female prisoners and their conditions. The committee recognized the need for separate facilities for female prisoners and emphasized the importance of providing adequate accommodation, hygiene, and medical care for women inmates. It recommended the establishment of separate women's prisons or sections within existing prisons to address the specific needs and vulnerabilities of female prisoners. The 1920 Jail Committee played a significant role in highlighting the need for reforming the prison system, including provisions for female prisoners, but it is essential to recognize that it was still part of the colonial era and the overall conditions within prisons were far from ideal. The full implementation of comprehensive reforms took time and continued to evolve even after India gained independence in 1947. After the recommendations of the 1920 Jail Committee, efforts were made to implement some of the proposed reforms and improvements in the prison administration and overall system of its working. However, it is important to note that

the process of prison reform is ongoing and has continued to evolve over time. Numerous changes, particularly those pertaining to female convicts, have occurred in the Indian jail system in the due course of years. Some significant areas of attention and development include. The construction of separate facilities for women inmates remained a top priority.

Various committees have been established for prison reforms in India. In 1987, the Justice K. Iyer committee highlighted the difficulties encountered by female inmates and proposed enhanced female participation in both law enforcement and prison management. The committee strongly promoted the adoption of a gender-sensitive approach to overseeing correctional facilities.

The Justice Iyer Committee's report on Women's prisons in 1987 made several key recommendations:

- i) Establishing measures to preserve the dignity of female inmates, even if they are found guilty or have received a conviction under the Criminal Code.
- ii) Establishing separate jails for Women prisoners with an all-female staff.
- iii) Implementing adequate prison standards, respecting human rights, maintaining discipline, and offering holistic programs to address issues such as psychosis and neurotic disorders in female offenders.
- iv) Providing free legal aid to all Women offenders.

As the years passed, additional Women's correctional facilities were constructed across different states in India. In the state of Maharashtra, the exclusive Women's prison can be found in Byculla. Moreover, the Yerawada Prison in Pune features a distinct facility for female inmates, overseen by a superintendent. Tihar Jail established its separate women's facility in 1995, making it another prominent prison for female inmates in India. During the colonial era, the British established the first female prison in India, Yerawada Women's Prison in Pune, Maharashtra, in 1889. It served as a model for subsequent female prisons in the country. After India's independence, the focus on prison reforms continued. Various state governments established separate women's prisons or sections within existing prisons across the country to cater to female inmates.

IV. Rights of Women in Custody in India: National Safeguards

Although the Indian constitution doesn't explicitly ensure the rights of female prisoners, it firmly upholds the foundational principle of gender equality. Within the Indian Constitution², we find *Article 14* which ensures equal legal protection for women, while *Article 15* prohibits discrimination based on gender. Despite these constitutional provisions, the Women prisoners encounter multiple challenges. To address these issues, the Government of India (GOI) enacted the 'Protection of Human Rights Act' in 1993 and established the 'National Human Rights Commission' to promote and safeguard human rights. *Article 39A* in *Part IV* of the Indian Constitution, which deals with the directive principles of state policy (DPSP), offers a framework for the state to ensure the economic and social rights of its citizens in a specified manner. This constitutional provision also grants women prisoners the right to avail themselves of free legal aid. The Criminal Procedure Code also contains special provisions with regards to the arrest of a female. The CrPC's consideration for the welfare of women is so substantial that it incorporates a provision within *Section 416*. This provision empowers the High Court to defer the execution of a death sentence if it is determined that a female convict who has been sentenced to death is in a pregnant state³. Additionally, should the High Court deem it appropriate, it has the authority to commute the sentence into life imprisonment. Evidently, this provision underscores the significance attributed to motherhood within the system of criminal justice. A proposed change to the *Section 416* proviso entails making it obligatory for the High Court to order commutation when a pregnant woman facing a death sentence is identified. The code stipulates that individuals accused of serious offenses with severe penalties should not be granted bail⁴.

Nonetheless, there exists a stipulation that exempts this rule for cases involving children less than sixteen years of age, individuals who are ill or infirm, as well as women. In simpler terms, even in grave cases, women and children are eligible for bail. This provision seems to be aimed at preventing

² The Constitution of India, art. 14, art. 15, art. 39A.

³ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s.416.

⁴ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s.437.

women and children from being detained in prison for extended durations, as such confinement could potentially result in more adverse consequences. It is important for authorities to ensure that the prison designated for imprisoning a pregnant woman has sufficient facilities for childbirth, antenatal care, and postnatal care for both the mother and child before proceeding with the imprisonment. Gynecological examinations of incarcerated women should be performed at local state hospitals. According to the Prisons Act of 1894, specific provisions are made for female prisoners, stating that searches and examinations should be conducted by the matron, based on the general or special instructions provided by the Medical Officer. According to Rule 53(1) of the Standard Minimum Rules for the treatment of prisoners⁵, in a facility that houses both men and women, the section designated for women must be under the authority of a responsible female officer. This officer will hold the keys to all areas allocated for women in the institution. As per Rule 53(2), no male staff member is allowed to enter the women's section unless accompanied by a female officer. Rule 53(3) specifies that women prisoners should only be attended to and supervised by female officers. However, this does not prevent male staff members, especially those with professional roles like doctors and teachers, from carrying out their duties in institutions or sections designated for women.

V. Factors that contribute to Women engaging in criminal activities

Renowned criminology experts have enriched the field with diverse theoretical models, and among them, Merton's strain theory of criminality, developed in 1938, remains a pivotal framework. This theory accentuates the joint responsibility of social structure and society in shaping criminal behavior. According to Merton, individuals, including women, are more likely to resort to illegal actions when conventional "social means" prove inadequate for achieving socially endorsed "social goals." Criminal behavior, as illuminated by various criminological perspectives, is a nuanced interplay of individual mindset, societal pressures, and biological influences. Motivations for criminal acts are wide-ranging and may include financial hardship, adolescent impulses, learned behavior ingrained by familial influences, and even the emulation of techniques seen in criminal media, illustrating the profound impact of media on shaping individual behavior.

In the context of female criminal activity, a comprehensive understanding involves delving into a myriad of contributing factors. These factors encompass a deficiency in emotional support, low literacy rates, moral decline, exposure to acts of violence, disrupted family structures, external environmental influences, violations of privacy, and compromised health. The complex interplay of these elements sheds light on the multifaceted nature of female involvement in criminal behavior. Financial hardship, for instance, can lead individuals, both men and women, to engage in criminal activities as a means of survival or addressing immediate needs. Adolescents, driven by developmental impulses, may commit crimes to fulfill basic desires. Learned behavior, strongly influenced by family dynamics, can significantly shape an individual's mentality and predisposition to criminal acts. Furthermore, the media's role in influencing behavior is underscored by individuals adopting techniques seen in criminal movies or series to resolve personal issues. Recognizing the factors contributing to female criminal activity is crucial for developing targeted interventions and policies that address the root causes. By comprehensively understanding the intricate web of influences, from familial dynamics to societal pressures, criminologists and policymakers can work towards implementing effective strategies to prevent and rehabilitate individuals involved in criminal behavior, thereby fostering a safer and more just society.

VI. Women Jail

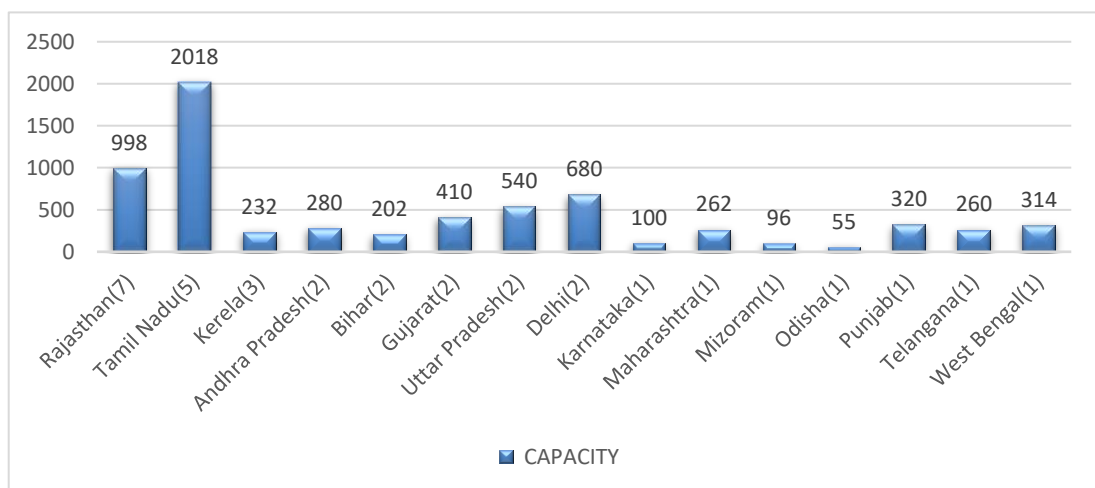
Female correctional facilities are specialized prisons designed solely for the incarceration of women prisoners. These women's correctional institutions may be established at various administrative levels, including sub-divisional, district, and central (Zone/Range) levels.

⁵ UN Standard Minimum Rules for the Treatment of Prisoners.

Status of Women Jail in India

- The annual prison statistics for all 36 States/Union Territories in India are submitted by their respective Prison Departments using a format prescribed by the NCRB.⁶
- In India, only fifteen States/Union Territories (UTs) had Women Jails, totaling thirty-two Women Jails, having a capacity which is of 6,767 prisoners.
- As of December 31, 2021, these Women's prisons collectively accommodated a total of 3,808 convicts, resulting in an occupancy rate of 56.3 percent. Among the inmates, there were also five transgender individuals.
- There were approximately 19,115 Women inmates housed in other types of jails (those other than women inmates) out of a total capacity of 22,659 (occupancy rate 84.4 percent)
- The largest concentration of female inmates was observed in the correctional facilities of Uttar Pradesh, where 4,995 women were incarcerated, followed by Bihar with 3,067, and Madhya Pradesh with 1,892.
- In the year 2021, there were a total of 587 non-governmental organizations (NGOs) dedicated exclusively to prison reform initiatives, and 202 NGOs solely focused on the welfare and well-being of women.

Graphical Representation of Number of Women Jails and its Capacity



The number in parentheses indicates the specific State's jail count, while the accompanying bar illustrates its capacity. Other UTs/States have no other Women Jail as on 31st December 2021. (Table Source-NCRB)⁷

⁶ National Crime Records Bureau, "Prison Statistics India 2021" available at: <https://ncrb.gov.in/prison-statistics-india.html>, (last visited on November 20, 2023)

⁷ Prison Statistics Report 2021, <https://tn.data.gov.in/catalog/prison-statistics-india-psi-2021>

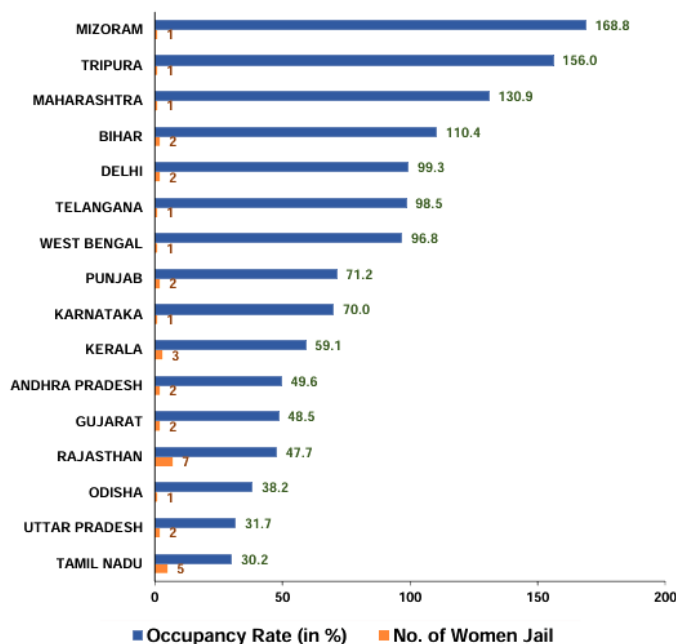


Chart: State/UT wise Occupancy Rate of Women Jails as on 31st December, 2022⁸

As per NCRB PSI Report 2022, there were only 34 women jails in India in which 4240 female prisoners (i.e. 17.8%) out of 23,772⁹ female prisoners at national level were reported. The rest of 20 States and UTs didn't have any Women jails separately¹⁰. As per the Chart, Rajasthan had the highest number of women jails, however the rate of women occupancy is only 47.7%. Tamil Nadu¹¹ having 5 Women jails followed by Kerala (3)¹², Andhra, Bihar, Gujarat, Punjab, Uttar Pradesh & Delhi having 2 women jails each respectively. Overcrowding is a biggest problem and states like Mizoram (168.8%), Tripura (156.0%), Maharashtra (130.9%) and Bihar (110.4%) has been registered as per NCRB data of 2022.

VII. Entitlement and Concern

The Hon'ble Supreme Court in *R.D Upadhyay Vs State of Andhra Pradesh & Ors*¹³, recognized the rights of female inmates and children residing with their mothers in jails. The Court acknowledged that some positive steps had been taken in this regard but noted that: "a lot more is required to be done in the States and Union Territories for looking after the interest of the children" and issued guidelines to ensure progress and maturation of children born to or living with incarcerated mothers.

In the matter of *Nandani Satpathy Vs P.L. Dani*¹⁴, the court emphasized that the right to avoid self-incrimination should be expansively construed to encompass the early stages of police investigations. Furthermore, the court raised concerns about the police practice of summoning women to police stations for questioning, deeming it a breach of *Section 160(1)* of the CrPC, which stipulates that police should interview no male person who is either under the age of fifteen years or above the age of sixty-five years, or a woman, or a mentally or physically disabled person at any place other than the place in which such male person or woman resides. The right to inmates in protective homes, the right to receive free legal assistance, and the right to a swift trial are essential. Female inmates are entitled to a prompt trial. There exists an undeniable entitlement to a speedy trial for undertrial prisoners, as

⁸ Prison Statistics India 2022, NCRB, Ministry of Home Affairs, <https://ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> (pg 14)

⁹ Ibid 8

¹⁰ Ibid

¹¹ PSI 2022 <https://ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=>

¹² Ibid 11

¹³ AIR 2006 SC 1946.

¹⁴ AIR 1978 SC 1025.

upheld in *Hussainara Khatoon & Ors Vs Home Secretary, State of Bihar*¹⁵. In addition, the Supreme Court has granted many rights to detainees in various decisions.

SPECIAL PROCEDURE FOR ARREST OF WOMEN

The Code of Criminal Procedure (CrPC) has special provisions for the arrest of women. These provisions prohibit the arrest of women before or after sunset, unless a Judicial Magistrate First Class has previously agreed to it. Additionally, female arrestees can only be inspected by female officers, taking into account the circumstances and decency.

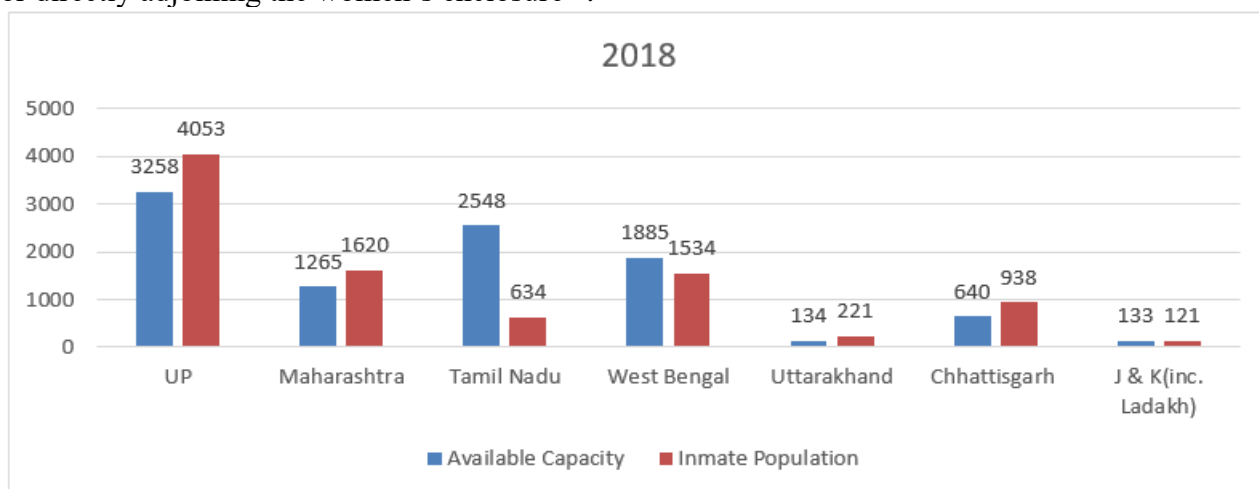
ACCOMMODATION

The biggest problem affecting Indian prisons is overcrowding. Maharashtra is one of six states in the country where women are incarcerated beyond the capacity of state prisons, NCRB¹⁶ data shows. In Maharashtra, the sole women's prison is in Byculla. The prison located in Yerawada, inside Pune has a specialized facility for Women inmates, managed by a Superintendent. Nevertheless, apart from these, women prisoners are housed within a distinct section inside the male prison. In contrast, various other states maintain a higher count of exclusive female correctional facilities. For example, Rajasthan has six, Tamil Nadu operates five, and Kerala has three dedicated Women's prisons.

When inmates are crowded together, issues related to hygiene and health can deteriorate, and even minor infections can quickly spread. Although it is better to house convicted criminals and those awaiting trial separately, this is often difficult due to the size of the facility. Furthermore, young adult offenders (aged eighteen to twenty-one), who are supposed to be held separately, often find themselves among older women offenders due to these constraints.

Many Women in prisons are compelled to lie down on the ground due to inadequate and improper sleeping arrangements. Moreover, there have been instances of insufficient resources, lighting and insufficient heating or cooling in the barracks and cells. Since women constitute only a small, tiny fraction of the overall prison population, they often do not have access to adequate specialized services or facilities. As a result, Women detained for various minor or non-violent offenses may find themselves incarcerated in high-security prisons, which are only necessary for a small number of women convicted of heinous and violent crimes. The limited availability of prisons equipped to accommodate women inmates contributes to this situation.

To address these challenges, it is crucial to ensure the strict separation of women prisoners from men prisoners. Under trial women should be segregated from convicts. Moreover, whenever possible, young female offenders should undeniably be kept separate from older prisoners, habitual offenders from non-habitual ones, and individuals involved in prostitution from those who have led respectable lives. The women's ward shall be so situated, as not to be overlooked by any part of the men's jail; and there shall, to the greatest extent achievable, be a separate hospital for sick women prisoners within or directly adjoining the women's enclosure¹⁷.



¹⁵ 1979 AIR 1369, 1979 SCR (3) 532.

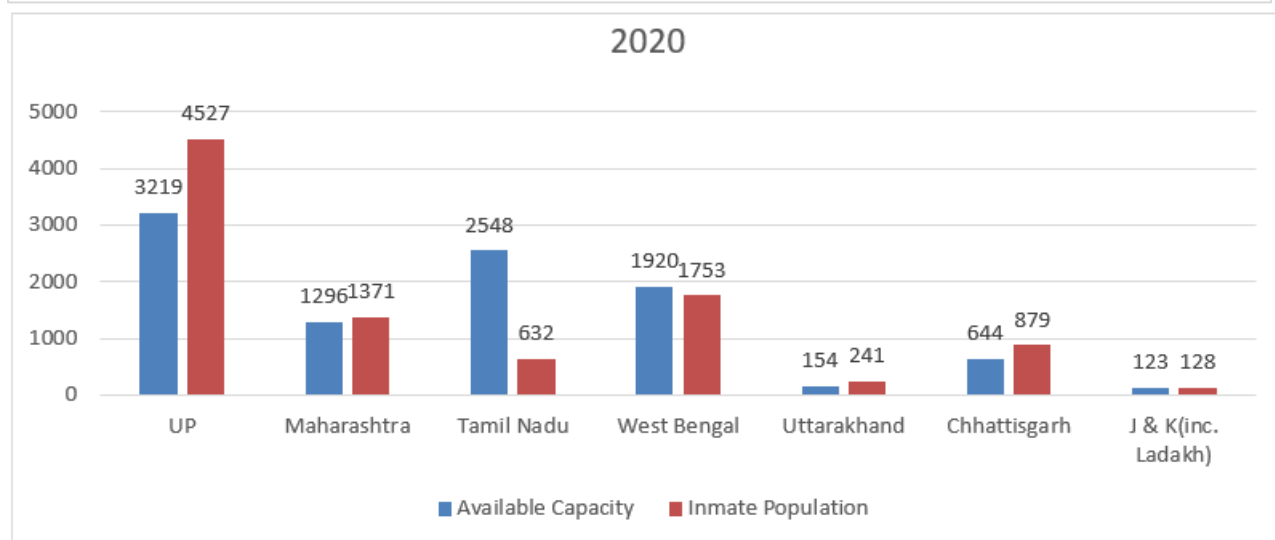
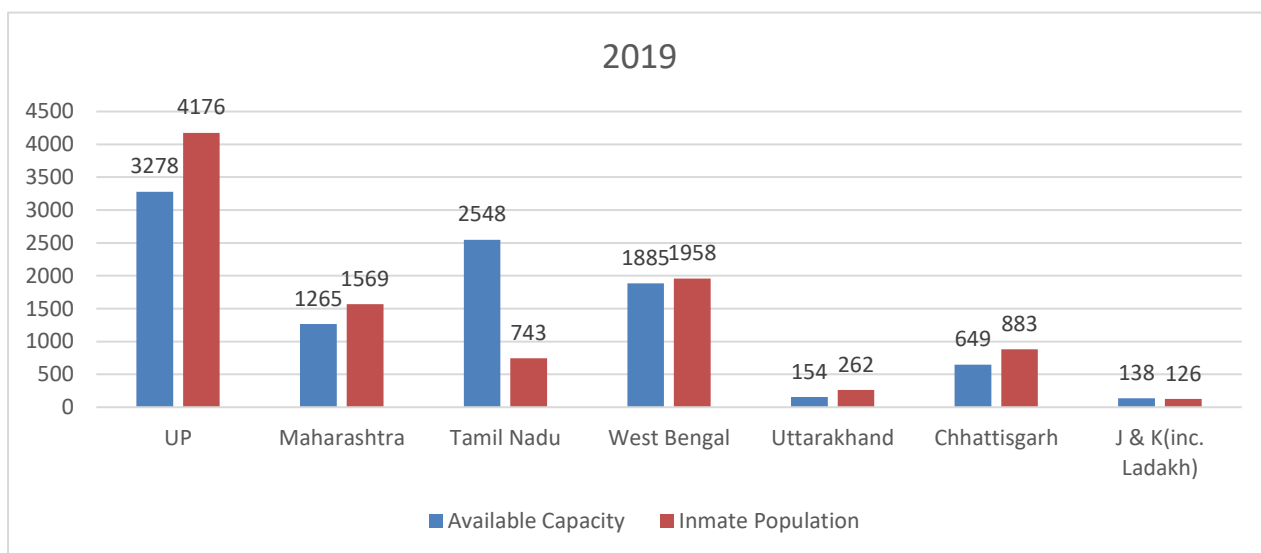
¹⁶ *Supra* note 6.

¹⁷ Maharashtra Classification of Prisons Rules, 1970

The data presented above derives its source from the National Crime Records Bureau (NCRB), providing a comprehensive insight into the capacity and inmate population of select Indian states during the pivotal years of 2018, 2019, and 2020. The focus of this analysis spotlights Maharashtra, Uttar Pradesh and Chhattisgarh, the states in the country grappling with a unique challenge: the number of female prisoners surpassing the designated capacity of state prisons.

Despite concerted efforts by the States to mitigate the risk of overcrowding and the transmission of Covid-19 during the pandemic, these States stand out as an anomaly. The decision to release prisoners on parole, a strategy implemented by various States, was intended to alleviate pressure on prison facilities. However, the data underscores the persistent challenges and raises questions about the effectiveness of the parole strategy or the need for additional measures to address the complex interplay of factors contributing to the overcapacity of female prisoners in the state.

Examining the broader context, the chart reveals a nuanced landscape across different states. Uttar Pradesh (UP), one of the most populous states in India, has witnessed a steady increase in its inmate population over the years. This growth, however, is not met with a proportional expansion of available space within state prisons. The discrepancy raises concerns about the adequacy of infrastructure and resources to accommodate the rising number of individuals within the penal system.



CHILDREN

There were 1650 women inmates with 1867 of children as on December 31, 2021¹⁸. It is of utmost necessity that we do not overlook the rights as well as the needs of these children who stay with their mother in Prison confinement. The Hon'ble Supreme Court issued guidelines in 2006 under which children in jail are individuals that have a fundamental right to access food, housing, healthcare, clothing, education, and recreational amenities. Gynecological examinations of prisoners are to be performed in District Government Hospitals. Arrangements should be established for the temporary release of inmates, with the exception of those considered high-risk, to have access for them to give birth in a hospital outside the correctional facility. To protect the child from potential societal stigma, it is advisable not to include the place of birth on the birth certificate. When the child reaches a certain age, they should be entrusted to the care of either the prisoner's family or placed in protective custody at a suitable children's facility. Before referring a pregnant woman to a hospital, it is important for the authorities to ensure that the hospital is equipped to oversee the delivery of an adequate number of children and provide comprehensive care for both the mother and child before and after birth.

FREE LEGAL AID

Article 39A of the Indian Constitution mandates the act of supplying or providing free legal assistance to economically disadvantaged and vulnerable segments of society, with the aim of ensuring justice for all. Additionally, *Article 14* and *Article 22(1)* of the Constitution¹⁹ impose a duty on the State to guarantee equality before the law and establish a legal framework that promotes justice through equal access to legal resources. To fully facilitate the rights of convicts, it is stipulated in the National Prison Manual that state governments must appoint legal advocates to visit correctional facilities, establish legal aid centers within each prison, and incorporate relevant legal education programs. States are also required to ensure the active collaboration of District and State Legal Service Authorities with correctional facilities in delivering free legal aid and promoting awareness of the rights of inmates.

CUSTODIAL DEATH & CUSTODIAL RAPE

Violence, including sexual assault by officials and prisoners, has been documented around the country. Official reports, however, understate the occurrence of violence since prisoners' fear retaliation because they are required to stay in the same location as their perpetrator.

In 1983, the term "Custody" was expanded and the idea of "Custodial Rape" was given more weight. A public employee commits a custody rape while carrying out his duties. In this context, "to take care of the person" is the duty.

In the case *State of Madhya Pradesh Vs Omkar Prasad Verma*, on 8 March 2007, the Supreme Court defined "Custody" as guardianship. Legal custody is required. Custodial rape should have taken place in the superintendent jail, a remand facility, or another legal place of custody. Rape perpetrated by administration or staff members of a hospital, mental health facility, rehabilitation facility, juvenile home, etc. is also referred to as 'custodial rape'.

Custodial Death: A death that takes place when an individual is under the control of law enforcement personnel or within a correctional facility. It can occur due to various things such as use of excessive force, neglect, or abuse by the authorities.

Custodial Rape: *Section 376* of the Indian Penal Code²⁰ covers "Sexual intercourse by a person in authority." Custodial rape is a rape that takes place when the victim is "detained" and incapable of escaping, and the perpetrator or perpetrators are individuals with authority responsible for the victim's detention.

¹⁸ National Crime Records Bureau, "Prison Statistics India 2021", p.no.13 (Ministry of Home Affairs, 2022)

¹⁹ *Supra* note 1

²⁰ Indian Penal Code (Act no. 45 of 1860) s.376.

VIII. Judicial Aspect on Custodial Rape and Custodial Death of Women by Police

The decision of Supreme Court in **Tukaram And Anr Vs. State of Maharashtra**²¹ created furors in the field of rape law. The fact of this case were so peculiar and the decision were so unjust that it led to the culmination of mass movement for the amendment of rape law. Mathura, a girl aged 16, was aiding Nunshi with household chores when she crossed paths with Nunshi's brother, who she later ran away with. In response, her own brother filed a legal case against both Nunshi and her sibling, leading to their apprehension. They were brought to the police station for questioning. Sometime later, all of them, except Mathura, were directed to leave. It was at this point that the head constable, Tukaram, requested that Mathura stay, and tragically, she met her demise. Initially, the session court determined that there was insufficient evidence to implicate the officers. Nonetheless, the High Court, in its judgment, found the police officers guilty. However, the Supreme Court later overturned the High Court's decision, resulting in the acquittal of both defendants. This decision triggered extensive protests across the nation.

In India, there were more than 4,400 fatalities in custody around 2020 and 2022. More than 21% of the killings occurred in Uttar Pradesh alone, raising concerns about the frequency of egregious human rights breaches in the most populous state in the nation. Unbias the News²² has received data from the National Human Rights Commission (NHRC), which is the rights organisations, for the period of 1 April 2020 to 31 March 2022. The data indicates that there were 278 police custody fatalities and 4,206 judicial custody deaths nationwide during this time. Of these, 935 judicial custody fatalities occurred in Uttar Pradesh, the most in the nation, while 17 police custody deaths occurred there, ranking third behind Maharashtra and Gujarat.

During this time, compensation was mandated for 252 deaths nationwide that occurred in court custody and 58 deaths that occurred in police custody. Both of these counts included instances that were carried over from previous years. For fatalities occurring in court, the total compensation was over 77 million Indian rupees, and for deaths occurring in police custody, it was over 21 million Indian rupees.

According to Article 21 of the Constitution, a person cannot be deprived of their life or liberty unless a legally mandated due process has been followed. In **Mehboob Bacha v. State**²³, it was decided that any kind of cruel and inhumane treatment would violate Article 21 during an inquiry, questioning, or any other phase.

In Sheo Kumar Vs. State of U. P²⁴:

The woman was detained on fictitious charges. Six months pregnant, Maya Tyagi was taken from the car, stripped, and assaulted. One of the group's officers thrust a lathi in her genital area. Cops sexually assaulted her in the police station. Police shot her husband which eventually caused him to pass away. Politicians supported the argument. Politicians from all throughout the nation and women's organizations have denounced this case. Four police officers received life sentences, while the other six received death sentences.

Sheela Barse Vs. State of Maharashtra²⁵:

This landmark case in Indian law that deals with the rights and conditions of women prisoners. The Apex Court heard the case in 1983. Journalist and social activist Sheela Barse initiated a Public Interest Litigation (PIL) representing the interests of female prisoners in Maharashtra. The PIL highlighted the deplorable conditions in which women prisoners were held in various prisons in the state, including overcrowding, lack of basic amenities, and inadequate healthcare facilities. Barse argued that these conditions violated the basic rights of women prisoners under the Indian Constitution. In this instance, the court determined that individuals in detention must be provided with legal representation, as

²¹ 1979 AIR 185, 1979 SCR (1) 810

²² <https://unbiasthenews.org/>

²³ (2011) 7 SCC 45

²⁴ AIR1978ALL386, [1978(37) FLR118], AIR 1978 ALLAHABAD 386, 1978 ALL. L. J. 581

²⁵ Writ Petition (Crl) No. 1053-1054 of 1982

mandated by *Articles 14, 19, and 39A* of the Constitution. The court also issued recommendations aimed at ensuring the safety and rights of female prisoners. These guidelines include notifying individuals of their arrest and the option of obtaining bail. It was emphasized that searches of women should be conducted only by female police officers. Additionally, female prisoners should not be arrested prior to sunrise or after sunset. It was also mandated that the police officer responsible for the arrest ensures that arrested women are segregated from men and placed in a female lock-up within the police station. In cases where there is no separate lock-up available, the arrested individual/woman should be kept in a different room. This case played a pivotal role in raising awareness about the rights of prisoners and advocating for humane treatment within the criminal justice system.

Kum. Manjula Govind Shetye Vs. The State of Maharashtra²⁶:

Prison guards at Mumbai's Byculla Jail purportedly killed Manjula Shetye, 45, on June 23, 2017, while she was finishing the last few months of her sentence. She was thus close to being released due to her good behavior after being given a life sentence for the murder of her sister-in-law. Shetye was reportedly being beaten up when inmates claim they heard her screams coming from the jailor's chamber. Jail guards continued to beat her with a rough object as they took her back to her cell and tied a scarf around her neck. According to eyewitnesses, male constables allegedly inserted their batons into Shetye's vagina while female constables held her legs apart. They prevented other inmates from offering assistance, leaving her in a bleeding state within her cell. According to the prosecution, one jailor and five guards badly bashed up Shetye, which resulted in her death.²⁷ The then Chief of the Maharashtra State Women's Commission (MSWC) visited Byculla prison after this alleged occurrence and a 3-member special investigation team was formed to probe into the incident.

IX. What can be done to improve the existing situation?

The following suggestions are a compilation of various Prison Reform Committees and Commissions that are yet to be fully and properly implemented.

- Separate women's prisons or sections (as it exists in Yerawada Central Prison) should be created in all central prisons, as far as possible.
- Government aided recreation-cum-library centers should be set up in each prison for women prisoners.
- Establishing a separate court to try Women's cases for speedy disposal in a manner that respects the principles of fairness, equality, and non-discrimination, ensuring that all parties involved receive a fair and just resolution of their cases. This is to avoid neglect of children of women prisoners, who suffer mentally and physically due to the forced separation from their mothers.
- The honorarium paid to the lawyers in the legal aid panel needs to be upgraded to decent levels to attract better quality legal aid lawyers, who will take up cases of under trial prisoners.
- It is essential to segregate undertrials, juveniles, repeat offenders, and first-time offenders. Likewise, individuals involved in non-violent political activities should be housed separately and not be confined in the same facilities as other lawbreakers.
- Provide comprehensive training to prison staff, including correctional officers, healthcare professionals, and administrators, on gender-specific issues and the unique needs of female prisoners. This training should emphasize empathy, cultural competence, and understanding of trauma-informed care.
- Build partnerships with non-governmental organizations (NGOs) and community organizations that have expertise in working with women in prison. Working together can expand the range of services and supports available to incarcerated women.
- Various commissions working for women can facilitate legal aid services for female prisoners, ensuring that they are granted access to legal representation and support. The commission can also

²⁶ AIR 2009 Bom HC

²⁷ Rebecca Samrvel, "Manjula Shetye murder case: Blow-by-blow account of jail inmate's killing", *THE TIMES OF INDIA*, Dec. 13, 2018.

provide counseling services for incarcerated women, addressing their emotional and psychological well-being and helping them cope with the challenges of imprisonment.

- Courts should make greater use of the Probation of Offenders Act 1958 to place young first-time offenders and less serious offenders on parole to reduce overcrowding in prisons. This implementation may be monitored by the DLSA and the prison Superintendent in the district.
- When the budget is completed each year, the prison budget should be included as appropriate, and the money should be directed to the state prison.

X. Conclusion

In the intricate tapestry of India's evolving societal fabric, a discernible and persistent uptick in the incarceration of women has emerged as a pressing concern. This phenomenon prompts an urgent and thorough exploration into the driving forces behind this escalating trend. Understanding the root causes is paramount, as it unveils the complexities that underlie the surge in female imprisonment and paves the way for targeted interventions to address these multifaceted challenges. It's important to highlight that dealing with the increasing imprisonment of women calls for a thoughtful approach. This approach goes beyond the usual legal rules and explores the complexities of the challenges women face in today's society. Understanding the specific difficulties women go through is not just something the law requires; it's a moral duty. Policies and regulations designed to safeguard the rights of incarcerated women should not remain confined to the realm of theoretical constructs; their efficacy hinges on rigorous and effective implementation in practice. The women confined within the walls of correctional facilities, a substantial number of whom await trial, are confronted with a myriad of challenges that extend far beyond the legal aspects of their imprisonment. The intended purpose of prison, often articulated as rehabilitation, frequently falls short in the face of systemic shortcomings and societal complexities. Therefore, it becomes imperative to delve deeper into the specific issues confronting women behind bars, recognizing their rights, and ensuring that these rights are not only acknowledged but steadfastly upheld. One pivotal step in rectifying the existing deficiencies is the establishment of an authentic and effective system to address grievances and prevent rights violations within the prison setting.

The incarcerated women must be empowered with a meaningful channel of communication with the administration, fostering an environment where concerns are not only heard but acted upon promptly. This requires a systemic shift that goes beyond superficial reforms and delves into the heart of prison governance, ensuring accountability and responsiveness to the needs and rights of female inmates. Looking beyond the confines of prison walls, a comprehensive strategy must extend its scope to post-release support. Recognizing that successful reintegration into society is a linchpin of the rehabilitation process, holistic measures are needed to equip women with the necessary tools and support systems upon release. This includes addressing the socio-economic factors that may contribute to recidivism and creating an environment that facilitates a smooth transition from incarceration to societal participation. Perhaps the ultimate goal, however, should be the reduction of the involvement of women in formal prison systems to the greatest extent possible. This ambitious objective demands a holistic approach that delves into the root causes of female criminality. It necessitates a paradigm shift from punitive measures to preventive strategies, creating alternative pathways and support systems that divert women away from the cyclical nature of incarceration. The increasing number of women being sent to prison in India needs a thorough and active response. We have to carefully look at why this is happening, put in place and follow rules and policies, understand the specific challenges faced by women in prison, and create strong support systems. Making changes is complex and involves many aspects. To make things better, we need to focus on the rights, choices, and rehabilitation of women in the criminal justice system. This journey involves not just changing laws but also thinking about our society, promoting ways to prevent crime and help people recover, rather than just punishing them. This will contribute to building a society that values the dignity and well-being of everyone.

REFERENCES

- Prison Statistics India- 2021 NCRB
- <https://www.legalserviceindia.com>
- <https://wcd.nic.in/>
- National Prisons Information Portal
- The Constitution of India, 1950
- The Constitution of India, art. 14, art. 15, art. 39A
- The Code of Criminal Procedure, 1973 (Act 2 of 1974), s.416
- The Code of Criminal Procedure, 1973 (Act 2 of 1974), s.437
- UN Standard Minimum Rules for the Treatment of Prisoners
- National Crime Records Bureau, “Prison Statistics India 2021” *available at:* <https://ncrb.gov.in/prison-statistics-india.html>, (last visited on November 20, 2023)
- AIR 2006 SC 1946
- AIR 1978 SC 1025
- 1979 AIR 1369, 1979 SCR (3) 532
- Maharashtra Classification of Prisons Rules, 1970
- National Crime Records Bureau, “Prison Statistics India 2021”, p.no.13 (Ministry of Home Affairs, 2022)
- Indian Penal Code (Act no. 45 of 1860) s.376.
- Rebecca Samervel, “Manjula Shetye murder case: Blow-by-blow account of jail inmate’s killing”, *THE TIMES OF INDIA*, Dec. 13, 2018.