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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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ROLE OF LAW IN PROTECTING WOMEN PRISONER'S RIGHTS IN RAJASTHAN

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Abstract:

A prison is place of accommodation for the people who have committed a crime and are undergoing trial for the commission of offence mainly criminal in nature. In India, prison administration is subject of state list in seventh schedule in the Constitution of India. We all know that the crime rate in India increasing in rapid pace. But there are no adequate facilities in various prison in our country to accommodate prisoners at least by providing facilities for a decent living inside prisons. This research paper examines the role of law to improve prison administration and protecting prisoners' right with special focus on women prisoners and their children. Despite the Indian Constitution, national laws, and international human rights instruments providing safeguards, women prisoners remain one of the most vulnerable and neglected groups in the criminal justice system. In Rajasthan, structural limitations, overcrowding, inadequate healthcare, lack of female staff, and limited legal aid disproportionately affect women prisoners, many of whom are undertrials, pregnant, or living with young children. The paper evaluates constitutional guarantees under Articles 14, 15(3), 19, 21, 22 and 39(A), national statutes like the Prisons Act, 1894, Bharatiya Nagarik Suraksha Sanhita, 2023, The Model Prison Manual, 2016 and other state laws and also highlighting the gaps between legal frameworks and their practical implementation. Judicial interventions including landmark cases like Sheela Barse v. State of Maharashtra and Inhuman Conditions in 1382 Prisons have reinforced the right to health, legal aid, and humane treatment for women prisoners. However, Rajasthan's prisons continue to reflect systemic neglect, outdated infrastructure, and weak enforcement mechanisms. The paper concludes that legal provisions must be supported by robust implementation, gender-sensitive infrastructure, and active institutional oversight. It offers recommendations including legislative reform, uniform adoption of the Model Prison Manual, enhanced legal aid, improved healthcare services, and strengthened collaboration with civil society.

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Key words: Gender-sensitive infrastructure, Legal Framework, Prison administration, Women prisoners

1. INTRODUCTION

Prisons are designed to serve not just as places for punishment, but also spaces for reform and rehabilitation within the meaning of criminal justice system. However, in practice, they often become spaces of systemic neglect especially for women prisoners, who are a small and vulnerable group in male-dominated prison environment. In India, and more specifically in Rajasthan, women in prisons face many difficulties because of weak infrastructure and poor administration, which affect their basic human rights. This research aims to study how the law helps protect these women both in written rules and in actual practice and whether the current legal and government systems truly support their dignity, safety, and rights. Women, making up only 2-3% (according to National Crime Records Bureau's 2022 data) of India's prison population, face unique challenges such as poor healthcare, lack of female staff, lack of privacy, dirty living conditions, and limited legal help. In Rajasthan many women prisoners are undertrials, and many of whom are pregnant or have children living with them, raise concerns and need special attention in laws and policies about the rights and care of both the mother and child.

In India, protection of women prisoners is based on the Constitution and specific laws. Articles 14, 15(3), 19, 21 and 22 guarantee equal treatment, personal freedom, and protection from cruel or unfair treatment. Article 21 includes the right to live with dignity, proper healthcare, privacy, and fair treatment even for people in jail. Specific laws like the Prisons Act 1894, Model Prison Manual 2016, Bharatiya Nagarik Suraksha Sanhita, 2023, The Rajasthan Prison Rules, 1951 and Rajasthan Prisoners Release on Parole Rules 1958 also mention women prisoners' rights. These include rules about having separate areas for women, providing medical care, and allowing mothers to keep their children with them under certain conditions.

At the international level, India has agreed to follow international guidelines and treaties to improve prison conditions and protect human rights, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), The Bangkok Rules, 2010 for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

However, despite these formal legal safeguards, international guidelines and treaties, the implementation at the state level such as Rajasthan's prison on the ground remains inconsistent. In Rajasthan, many prisons lack the necessary facilities and trained staff to cater to women's specific needs, leading to overcrowding, lack of separate spaces, and inadequate staff. This creates an unsafe environment and disrespectful conditions for women prisoners and their children who lived with them in prison.

In Rajasthan for prison management and protection of prisoner rights many laws are enacted in state, but the provision of these laws does not give enough attention to specific needs of women prisoners. There is an urgent need for separate, well-maintained women's prisons, female medical staff, support for pregnant inmates and their children, and improved access to education and job training programs.

Besides that laws, judiciary also has been actively protecting women prisoners' rights, as highlighted in the landmark case *Sheela Barse v. State of Maharashtra* (1983) stressed the importance of legal aid and humane treatment for female inmates. Later, in *Inhuman Conditions in 1382 Prisons, In Re* [(2016) 3 SCC 700], highlighted the serious issues of overcrowding, poor sanitation, and violence in custody. In *R.D. Upadhyay v. State of Andhra Pradesh & Ors.* (2006) Supreme Court set a guideline for women prisoner and allow children up to six years old can live with their mothers in prison but must be given proper food, education, and recreational opportunities. The Rajasthan High Court has taken suo motu action to review prison conditions and request the state government to report on progress in following the Model Prison Manual. However, long-term and effective changes in prison systems require strong institutional efforts.

This research paper aims to examine the legal, administrative, and human rights aspects of women's prisoners in Rajasthan, evaluating the application of current laws and policies, identifies gaps between what the law says and what actually happens in practice and provide suggestions for improving conditions. Rajasthan, with its unique mix of rural and urban prisons, financial challenges, and recent legal developments, provides a valuable example of the strengths and weaknesses of the legal system in protecting women prisoners' rights.

2. LEGAL FRAMEWORK:

The protection of women prisoners in India, including the state of Rajasthan, is shaped by a multi-layered legal framework that includes constitutional rights, national laws, prison manuals, court decisions, and state-specific laws or rules. To improve prison's situation, it's crucial to understand the legal system and work towards stronger prison reforms.

2.1 Constitutional Provisions: The Constitution of India serves as the highest legal authority, safeguards fundamental rights for all individuals, including incarcerated individuals, ensuring equality, dignity, and personal freedom despite imprisonment restriction through following articles:

- a) **Article 14** the Constitution upholds the principle of equality before the law and equal protection of the law. It extends to women prisoners, ensuring non-discriminatory treatment in prison administration, healthcare, education, and vocational training.
- b) **Article 15(3)** allows the State to create gender-responsive prison policies, addressing the specific needs of female inmates, including separate accommodations, prenatal and postnatal care, and support for mothers with dependent children.
- c) **Article 19** guarantees freedoms, including speech and expression, which are relevant during incarceration but subject to restrictions, and can be used for legal counsel, literacy, rehabilitation programs, and grievance expression.
- d) **Article 21**, safeguarding life and liberty, to include rights to dignity, health, privacy, and humane treatment to all and for women prisoners also.
- e) **Article 22** safeguards against arbitrary arrest and detention, providing individuals with rights such as immediate notification, consultation with their lawyer, production before a magistrate within 24 hours, and detention's right of representation.
- f) **Article 39A** of State Policy emphasizes free legal aid and equal access to justice, particularly for women inmates who often lack awareness of their legal rights and financial means.

While laws and Supreme Court directives exist to safeguard rights, weak enforcement, understaffing, and inadequate oversight in Rajasthan's prisons hinder their realization. Bridging this gap requires systemic reforms, accountability mechanisms, and regular monitoring to uphold constitutional protections effectively.

2.2 National Legislation

India's legislative framework governing prison administration laws form an essential part of the broader legal architecture designed to ensure humane and just treatment within the criminal justice system.

a) The Prisons Act, 1894: One of the oldest legislations governing prison administration in India, the Prisons Act of 1894 outlines general procedures and responsibilities for prison management. Some key sections include:

- **Section 27:** Provides for the separation of male and female prisoners.
- **Section 29:** Deals with the provision of medical examination of prisoners.
- **Section 30:** Mentions solitary confinement, though widely discouraged today.

However, the Act is significantly outdated and does not adequately address the needs of women prisoners, such as gender specific infrastructure, maternity support, mental health care, or childcare facilities.

b) The Prisoners Act, 1900: This act highlighted that it is the duty of the government to remove any prisoner detained under any order or sentence of any court who is of unsound mind to a lunatic asylum or other place where he will be given proper treatment.

c) Transfer of Prisoner's Act, 1950: The main object to passed this act to avoid overpopulation in prisons. Prisoners are transferred from one state to another for vocational training and to get rid of overcrowding.

d) The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replaces the Code of Criminal Procedure (CrPC), contains several provisions safeguarding prisoners' rights.

- **Section 35:** It ensures protection against arbitrary arrest
- **Section 38:** Right of arrested person to meet an advocate of his choice during interrogation
- **Section 48:** Mandates informing arrested individuals of their rights and guarantees access to legal counsel (Section 48(1)(b)). BNSS promotes fair investigation timelines and upholds the presumption of innocence.
- **Section 56:** Health and safety of arrested person is a duty of the person having the custody of an accused
- **Section 58:** Production before magistrate within 24 hours safeguards against illegal detention by requiring that a person be produced before a magistrate within 24 hours of arrest.

e) **Model Prison Manual (2003 and 2016):** The Ministry of Home Affairs revised the Model Prison Manual in 2003 and again in 2016. It seeks to address the deficiencies of the **Prisons Act, 1894**, particularly by introducing human rights-based, gender-sensitive provisions. The Manual acts as a suggestive framework for the states and emphasizes the reformation and rehabilitation of prisoners rather than mere confinement and control. The latest version emphasizes:

- Rehabilitation and reformation of prisoners
- Prenatal and Postnatal care for pregnant inmates
- Vocational training and education
- Human rights protections and mental health treatment
- Technology application to prison management (e-Prisons project)

However, being a state subject, implementation of the manual has been lukewarm.

f) **National Human Rights Commission (NHRC) Guidelines:** The NHRC has also worked actively in the assessment of prison conditions since the 1990s. It has expressed concerns regarding custodial deaths, denial of medical care, and refusal of legal aid. It emphasizes the need for mental health services, particularly for women suffering from trauma, depression, or anxiety. It recommends periodical inspections of women's facilities, enhanced grievance mechanisms, and implementation of international human rights norms.

2.3 State Laws:

- a) **The Rajasthan Prison Rules, 1951:** This act constitutes the principal regulatory framework for prison administration in the state. However, they are largely derivative of colonial-era legislation and exhibit limited gender sensitivity. Key shortcomings include the absence of gender-specific provisions such as maternity care, mental health support, and access to female medical staff. Infrastructure remains inadequate, with many prisons overcrowded and lacking separate, dignified facilities for women. There is also a significant deficit of trained female personnel. Healthcare services, particularly in reproductive health, are insufficient. Furthermore, while children may reside with their mothers, provisions for childcare and education are grossly inadequate.
- b) **Rajasthan Prisoners Release on Parole Rules 1958:** The Rajasthan Prisoners Release on Parole Rules, 1958, were enacted to provide a mechanism for the release of prisoners from jail on parole in the state of Rajasthan, India. The rules are designed to promote the rehabilitation of prisoners and to maintain the security of the public. It aims to

provide prisoners with an opportunity to maintain family ties, attend to urgent personal matters, and reintegrate into society. However, the rules also emphasize the importance of public safety and ensure that parole is only granted to prisoners who are deemed to be of low risk of reoffending.

2.4 Judicial Interventions

The Indian judiciary has expanded the interpretation of Article 21 of the Constitution to include rights to health, dignity, legal aid, and protection from inhumane treatment, ensuring that prisoners are not denied their fundamental rights, except those restricted by incarceration.

In *State of Gujarat v. Hon'ble High Court of Gujarat* (1998), the Supreme Court emphasized that women in prison are entitled to safe childbirth, proper nutrition, and healthcare. The ruling ordered that special care and separate wards should be provided for pregnant women, affirming that their right to health and dignity does not end with imprisonment.

In *Rajasthan High Court Bar Association v. State of Rajasthan* (2005), the Court took cognizance of poor prison conditions, overcrowding, and lack of medical care, and directed the state government to initiate reforms in prison infrastructure and ensure humane treatment of inmates. The Court emphasized that prisons must comply with constitutional mandates and international human rights standards.

In *R.D. Upadhyay v. State of Andhra Pradesh & Ors.* (2006) the Supreme Court stated that children up to six years old can live with their mothers in prison but must be given proper food, education, and recreational opportunities by prison administration. The Court also called for cooperation between prison authorities and child welfare departments, aligning Indian practice with international obligations under the UN Convention on the Rights of the Child.

In a more recent case, *Inhuman Conditions in 1382 Prisons, In Re* (2016), the Supreme Court took action on its own (suo motu) to address poor conditions in prisons across the country. Although this case did not focus only on women, it covered important issues like overcrowding, lack of staff, poor healthcare services, and denial of legal aid all of which tend to affect women inmates more severely due to their smaller numbers and the male-oriented nature of prison administration.

In *Rajasthan State Legal Services Authority v. Union of India* (2017), the High Court focused on the problem of undertrial prisoners those who are still waiting for their trial. Many women in Indian prisons are undertrials, often stuck due to poverty, lack of education, or no access to legal help. The Court directed the state to ensure proper legal aid by setting up legal clinics and services inside prisons. It reinforced the right to legal aid under Article 39A of the Constitution, which aims to provide equal access to justice

In *Suo Motu v. State of Rajasthan* (2020), the Rajasthan High Court addressed the plight of undertrial prisoners during the COVID-19 pandemic, issuing directions for decongestion of prisons and ensuring access to proper healthcare. It also ordered regular medical check-ups and provision of sanitary products for women inmates, thereby reinforcing gender-sensitive approaches.

In landmark judgments such as *Sunil Batra v. Delhi Administration* (1978), *Sheela Barse v. State of Maharashtra* (1983), and *Hussainara Khatoon v. State of Bihar* (1979) have laid the foundation for judicial activism in prison reforms. The Rajasthan High Court has drawn upon these precedents to uphold prisoners' rights within the state context.

In order to uphold the rights of female inmates, Indian courts have enhanced healthcare, ensured legal aid, and campaigned against abuse in custody. Many of these recommendations, still have not been fully implemented. To make progress, state authorities must follow judicial orders, allocate resources, and regularly monitor prison conditions. This will enable the full realization of the constitutional and international rights of women prisoners

3. INTERNATIONAL STANDARDS AND INDIA'S COMMITMENTS

India, a democratic republic, has consistently upheld international human rights norms through its participation in global conventions and standard-setting instruments. These frameworks influence national laws, judicial interpretations, and administrative practices concerning prison governance, particularly for women. They aim to protect human dignity, ensure gender sensitivity, and promote rehabilitative approaches within correctional systems. Some of international treaties are as follow:

- a) **The Nelson Mandela Rules**, adopted by the United Nations General Assembly in 2015, as a revision of the 1955 Standard Minimum Rules provide guidelines for the humane

treatment of prisoners. These rules affirm that persons deprived of liberty retain fundamental human rights, prohibit torture, non-discrimination, and promote rehabilitation and social reintegration. Rule 1 affirms the inherent dignity of all prisoners, prohibiting discrimination based on gender, race, language, or religion. The rules mandate the separation of vulnerable groups and advocate for appropriate disciplinary mechanisms. In India, these provisions have influenced recommendations by the National Human Rights Commission and judicial pronouncements on prison reform.

- b) **UN Bangkok Rules, adopted in 2010**, are a gender-sensitive supplement to the Nelson Mandela Rules, addressing the specific needs of women in the criminal justice system. They advocate for measures that respect these distinctions, including non-custodial alternatives for non-violent offenders, adequate healthcare, protection against sexual violence and abuse, and facilities for mothers and children in prison. The Rules also emphasize that pre-trial detention for women should be used as a last resort. In India, certain provisions of the Bangkok Rules have been integrated into the Model Prison Manual, 2016, but their practical implementation remains inconsistent across states, with structural and administrative limitations hindering the full realization of these international commitments.
- c) **The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, adopted by the United Nations in 1979. As a signatory, India is obligated to uphold CEDAW's principles, which require states to eliminate discrimination against women in all spheres, including criminal justice and prison systems. CEDAW emphasizes gender-sensitive treatment, ensuring rights to health, dignity, education, and protection from abuse. For incarcerated women, it encourages measures such as providing adequate healthcare especially reproductive and mental health services, protection from violence and sexual harassment, and alternatives to imprisonment for non-violent offenders, especially mothers and pregnant women. It also emphasizes training prison staff on gender sensitivity and creating policies that consider women's specific needs. In India, including Rajasthan, the influence of CEDAW can be seen in judicial pronouncements and policy discussions, but its full implementation remains limited.

In addition to these instruments, India is a state party to the International Covenant on Civil and Political Rights (ICCPR), and a signatory to the Convention Against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Convention on the Rights of the Child. Article 7 and Article 10 of the ICCPR explicitly require humane treatment of individuals deprived of liberty and prohibit torture or degrading punishment. Although India has not ratified CAT, its status as a signatory implies a moral and diplomatic obligation to uphold its core principles.

Despite these formal commitments, the domestic application of international human rights norms remains uneven. In states like Rajasthan, significant challenges persist, including inadequate prison infrastructure, shortage of trained female staff, insufficient healthcare services for women, and lack of institutional oversight. While judicial interventions and policy revisions such as those based on the Model Prison Manual have initiated incremental improvements, many structural deficiencies endure. The reliance on outdated laws such as the Prisons Act, 1894, and the Rajasthan Prison Rules, 1951, further constrains efforts to achieve comprehensive reform. Moreover, financial limitations and lack of political prioritization impede the full implementation of international standards.

4. INSTITUTIONAL MECHANISMS AND OVERSIGHT IN SAFEGUARDING THE RIGHTS OF WOMEN PRISONERS

The protection of human rights within custodial settings, particularly with regard to women inmates, necessitates the establishment of robust institutional mechanisms and consistent oversight. In the Indian context, a range of statutory, quasi-judicial, and civil society institutions play a pivotal role in monitoring prison conditions, ensuring adherence to constitutional and legal safeguards, and advocating systemic reforms. These institutional are:

a) Role of NHRC and Rajasthan State Human Rights Commission (RHRC)

The **National Human Rights Commission (NHRC)**, established under the Protection of Human Rights Act, 1993, is a premier institution mandated to investigate and address human rights violations, including those arising in custodial environments. The NHRC regularly undertakes prison inspections and issues advisories to promote the humane treatment of prisoners. A significant area of its concern relates to issues that disproportionately affect women inmates. The NHRC has advocated for gender-sensitive practices in correctional facilities, including female officers, crèche and nursery facilities, and menstrual hygiene products. It also compiles data on custodial

deaths and analyses them in annual reports to Parliament, highlighting structural deficiencies in women prisoners' treatment, such as overcrowding, insufficient medical infrastructure, and lack of rehabilitation programs.

At the state level, the **Rajasthan State Human Rights Commission (RHRC)** serves a complementary function. The RHRC has addressed multiple instances of rights violations within Rajasthan's prisons, including inadequate living conditions for women inmates and the failure to provide necessary care for children residing in prison settings. The Commission has the authority to receive complaints from prisoners or their families, conduct investigations, and make policy recommendations to the state government. Nonetheless, the RHRC's effectiveness is constrained by limitations in its enforcement powers, inadequate institutional resources, and occasional bureaucratic inertia, all of which impede the full realization of its mandate.

b) Role of Prison Inspectors

Oversight by designated authorities, particularly through prison inspections and judicial visits, remains a cornerstone of prison accountability. As per the Prisons Act, 1894 and the Model Prison Manual (2016), prison inspectors and district-level judicial officers are entrusted with the responsibility of conducting regular and independent inspections. These visits are crucial in monitoring conditions related to sanitation, discipline, medical care, nutrition, and access to legal services. Despite these frameworks, the efficacy of such inspections is often undermined by inconsistency in frequency, superficiality of assessments, and lack of actionable follow-up. In Rajasthan, although some districts maintain regular inspection records, significant gaps persist in the implementation of recommendations and the institutionalization of feedback mechanisms. Strengthening the accountability of inspecting officials and ensuring transparency in inspection processes are imperative for enhancing systemic responsiveness.

c) Role of Non-Governmental Organizations and Legal Aid Institutions

Non-Government organizations and legal aid bodies serve as critical adjuncts to formal oversight institutions by addressing structural and service delivery gaps in the prison system. Notable national organizations such as **Prayas**, the **Commonwealth Human Rights Initiative (CHRI)**, and the **Human Rights Law Network (HRLN)** have actively engaged in prison reform initiatives, conducted empirical research on prison

conditions, and provided direct legal assistance to incarcerated women. In the specific context of Rajasthan, several NGOs have collaborated with the **Rajasthan State Legal Services Authority (RSLSA)** to extend legal literacy, paralegal services, and counselling to women prisoners. Legal aid clinics, now present in various central and district jails, serve as critical access points for undertrial prisoners many of whom are indigent and lack the means to engage private legal representation. The Legal Services Authorities Act, 1987 and the Directive Principles of State Policy under article 39A of the Constitution form the normative basis for such interventions.

Additionally, NGOs are frequently the sole providers of gender-responsive services, such as trauma-informed counselling, skill-based vocational training, and support for survivors of custodial sexual violence. Their contributions are particularly vital in addressing the unique needs of pregnant women and mothers with infants, a segment of the prison population that is often overlooked by state institutions.

Nonetheless, these organizations operate under several constraints, including restricted access to prisons, bureaucratic hurdles, and limited financial sustainability. The absence of formal frameworks for collaboration between prison authorities and civil society further restricts their impact. Institutionalizing such partnerships through Memoranda of Understanding (MOUs), capacity-building programs, and independent monitoring structures would greatly enhance their role in prison oversight.

5. ANALYSIS OF GAPS AND CHALLENGES IN PROTECTING THE RIGHTS OF WOMEN PRISONERS

India's ratification of international human rights instruments has led to constitutional guarantees and ratification of key instruments, but women prisoners' rights remain a serious concern, especially in Rajasthan due to structural, legal, and institutional shortcomings, socio-economic marginalization, and gender-based discrimination.

- a) Legal and Policy Gaps:** India's prison legislation, including the Prisons Act, 1894, is outdated and lacks gender-specific provisions, disproportionately affecting women prisoners. The Model Prison Manual, 2016, introduced international standards but has been inconsistently adopted across states. This leads to disparities in treatment and lack of a binding national law incorporating global norms into domestic prison governance, further limiting their enforceability.

- b) Institutional and Oversight Deficits:** Institutional oversight mechanisms like prison visiting boards, State Human Rights Commissions, and judicial officers are often neglected due to inefficiencies, lack of training, and inadequate coordination. Regular inspections often fail to result in substantive reform. Female inmate prisons are often administered by male officers, compromising privacy, safety, and trust.
- c) Health and Reproductive Rights:** Access to healthcare, particularly reproductive and mental health services, is a major concern in India as well as in Rajasthan also, where prisons lack qualified female healthcare personnel, gynecologists and screening mechanisms. Pregnant women and mothers with infants often receive substandard care, violating constitutional and international commitments under CEDAW and the ICCPR. Mental health support is absent despite high levels of trauma and distress among incarcerated women. Basic hygiene, including menstrual health management, remains inconsistent and poorly resourced.
- d) Legal Aid and Undertrial Imprisonment:** A substantial proportion of women prisoners are undertrials, many detained for non-violent or minor offences. Legal representation remains inadequate, especially for women from marginalized communities, who lack awareness and financial means to access bail or legal aid. Existing legal aid frameworks often lack effective implementation, leaving women in extended pre-trial detention and legal uncertainty.
- e) Reintegration and Social Stigma:** Post-release rehabilitation and reintegration support are minimal. Vocational training offered in prisons is limited in utility, and few programs address the societal reintegration of formerly incarcerated women. Deep-rooted patriarchal attitudes result in social ostracization, particularly for women perceived as having transgressed both legal and social norms. This compounded stigma significantly hinders reintegration and recovery.

6. CONCLUSION

The condition of women prisoners in India, and specifically in Rajasthan, reflects the deep-rooted systemic neglect of gender-sensitive criminal justice reforms. Despite constitutional guarantees under Articles 14, 15, 21 and 22, as well as India's commitments under international human rights treaties like CEDAW, the Nelson Mandela Rules, and the UN Bangkok Rules, the protection of women inmates' rights remains largely aspirational. Structural inadequacies in prison infrastructure, outdated legal frameworks, inconsistent implementation of reform

policies, and lack of political will have collectively undermined the rights and dignity of women in custody. These women many of whom come from socially and economically disadvantaged backgrounds face compounded vulnerabilities due to patriarchal biases, prolonged pre-trial detention, inadequate legal aid, and the absence of rehabilitation or reintegration mechanisms. Furthermore, the persistent gaps in healthcare, especially reproductive and mental health services, the scarcity of female prison staff, and inadequate oversight by institutions such as the NHRC and Rajasthan Human Rights Commission continue to exacerbate their plight.

The situation is further aggravated by the lack of uniform application of the Model Prison Manual, 2016, and limited incorporation of gender-responsive measures at the state level. In Rajasthan, although judicial interventions and NGOs have initiated some reforms, progress remains fragmented and insufficient. The continued reliance on the colonial-era *Prisons Act, 1894*, underscores the urgent need for a contemporary, rights-based legislative overhaul. To ensure that prisons are not merely sites of punitive isolation but spaces for rehabilitation, India must align its prison policies and practices with its constitutional values and international obligations. A transformative approach grounded in equity, dignity, and restorative justice is essential to safeguard the rights of women prisoners and promote their meaningful reintegration into society.

7. RECOMMENDATIONS

- 1. Enact a Gender-Sensitive National Prison Law:** Replace the *Prisons Act, 1894* with a modern, comprehensive statute incorporating provisions for the special needs and rights of women prisoners, in alignment with the UN Bangkok Rules and other international standards.
- 2. Uniform Implementation of Model Prison Manual (2016):** Mandate the adoption and regular review of the Model Prison Manual by all states, including Rajasthan, with specific focus on gender-sensitive provisions such as mother-child care units, sanitary hygiene, and mental health support.
- 3. Strengthen Oversight Mechanisms:** Ensure regular, meaningful judicial and human rights commission visits to prisons, with special attention to women's facilities. Reports from NHRC and SHRC must be made public and followed by time-bound corrective action.

- 4. Increase Female Staffing and Training:** Ensure the recruitment of adequate numbers of female prison staff, medical professionals, and counsellors. All personnel should receive training in gender sensitivity, trauma-informed care, and human rights standards.
- 5. Enhance Legal Aid and Pre-trial Services:** Strengthen the legal aid mechanism through in-prison legal clinics, regular visits by Legal Services Authorities, and fast-track disposal of cases involving women undertrials, particularly those incarcerated for non-violent offences.
- 6. Improve Healthcare and Reproductive Services:** Ensure the availability of qualified female doctors, gynecologists, and mental health professionals in prisons. Provide regular health check-ups, prenatal/postnatal care, menstrual hygiene products, and psychological counselling.
- 7. Develop Post-release Reintegration Programs:** Introduce structured rehabilitation programs, including vocational training, employment assistance, housing support, and family counselling, to facilitate the social reintegration of women prisoner's post-release.
- 8. Promote Community and NGO Participation:** Encourage collaboration with civil society organizations for prison monitoring, rights education, legal awareness, and reintegration support. Establish institutional partnerships for delivering skill development and mental health services.
- 9. Create a Centralized Prison Data Portal:** Establish a publicly accessible national database on prison statistics, disaggregated by gender, caste, and offense type, to facilitate transparency, policy planning, and academic research.
- 10. Institutionalize Periodic Policy Review and Accountability:** Set up an independent Prison Reform Commission at the central and state levels to monitor compliance with national and international standards and recommend ongoing improvements in prison governance.

Bibliography:

Books and Commentaries

- Baxi, Upendra, "The Crisis of the Indian Legal System", Vikas Publishing, New Delhi, 1982.
- Bhardwaj, Surinder Mohan, "Prison System in India: A Critical Study", Deep & Deep

Publications, New Delhi, 1999.

- Chockalingam, K. & Vivek Sanjeevi, "Prison Reforms in India", National Law University Press, Hyderabad, 2015.
- Rao, Mamta, "Law Relating to Women and Children", Eastern Book Company, Lucknow, 2022.
- Singh, M.P., Constitution of India, Eastern Book Company, Lucknow, 2021.

Primary Sources

- Constitution of India, 1950.
- Prisons Act, 1894.
- The Prisoners Act, 1900.
- Rajasthan Prison Rules, 1951.
- Rajasthan Prisoners Release on Parole Rules 1958.
- Model Prison Manual, Ministry of Home Affairs, Government of India, 2016.
- The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.
- The Bharatiya Nyaya Sanhita (BNS), 2023.
- Transfer of Prisoner's Act, 1950.

International Instruments

- United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), UN General Assembly Resolution A/RES/70/175 (2015).
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), UN General Assembly Resolution A/RES/65/229 (2010).
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.
- International Covenant on Civil and Political Rights (ICCPR), 1966.
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984.

Judicial Decisions

- *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.
- *R.D. Upadhyay v. State of Andhra Pradesh*, (2006) 3 SCC 422.

- *Inhuman Conditions in 1382 Prisons, In Re*, (2016) 3 SCC 700.
- *State of Rajasthan v. Asha*, Rajasthan High Court, 2021 (Media Suo Motu Writ).
- *Upendra Baxi (Dr.) v. State of UP*, AIR 1983 SC 1125.

Reports and Government Publications

- National Human Rights Commission (NHRC), *Annual Reports*, various years, New Delhi.
- NHRC, *Women in Prisons: India Report*, 2018.
- Ministry of Women and Child Development, *Report on the Status of Women in India*, Government of India, 2015.
- National Crime Records Bureau (NCRB), *Prison Statistics India*, Ministry of Home Affairs, New Delhi, latest editions.
- Rajasthan State Human Rights Commission Reports, accessed via official portal.



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