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+91 70421 48991  
editor@ijlar.com  
www.ijlar.com

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## Introduction

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## Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

# **INVISIBLE BEHIND BARS- A CRITICAL STUDY OF WOMEN PRISONERS' RIGHTS AND INSTITUTIONAL NEGLECT**

AUTHORED BY - SIMRAN DEVI & KAMALJEET KAUR<sup>1</sup>

## **ABSTRACT**

Women prisoners remain one of the most marginalised and overlooked groups within the criminal justice system in India. Although constitutional protections and statutory safeguards recognise the rights of women in custody, the actual prison environment often reflects structural neglect, gender insensitivity, and inadequate institutional support. The condition of women prisoners therefore raises important concerns regarding human dignity, equality, healthcare, and access to justice within custodial institutions. This study examines the lived invisibility of women prisoners in India by analysing how rights guaranteed in constitutional law and procedural safeguards under the new criminal justice framework translate—often imperfectly—into custodial reality. Using doctrinal methodology, it evaluates the protection of dignity, equality, health, privacy, and access to justice for women in custody, with particular focus on arrest and detention safeguards under the Bharatiya Nagarik Suraksha Sanhita, 2023, and the broader correctional standards reflected in national prison policy instruments and international human rights norms. The research highlights institutional neglect manifested through overcrowding, inadequate gender-responsive healthcare, poor menstrual hygiene support, weak grievance redress, and inconsistent access to legal aid, especially for undertrial women, pregnant prisoners, and mothers with children. It argues that the central problem is not the absence of norms but the persistence of implementation gaps, limited accountability, and gender-blind prison governance. The study concludes with rights-based recommendations to strengthen compliance, monitoring, and gender-sensitive prison reform.

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<sup>1</sup> Student of LLM, Student ID:25072001142, University School of Law, Rayat Bahra University, Mohali; Assistant Professor, University School of Law, Rayat Bahra University, Mohali

**Keywords:** *Women prisoners; Institutional neglect; BNSS 2023; Dignity and equality; Custodial safeguards; Prison reform*

## 1 INTRODUCTION

Women prisoners in India remain “invisible” within a prison system historically designed around male populations, where gender-specific needs are often treated as peripheral rather than integral to lawful custody. The subject of women prisoners’ rights therefore covers not only protection from violence, humiliation, and discriminatory treatment, but also affirmative duties relating to privacy, health care, menstrual hygiene, pregnancy, childcare, mental health, legal aid, and reintegration. Contemporary analysis must be anchored in enforceable legal safeguards, particularly the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which embeds procedural protections relevant to women in custody—such as Section 43(5) restricting arrest of women after sunset and before sunrise (except with prior Magistrate permission), Section 43(1) limiting physical contact by male officers during arrest, Section 49 requiring decency-sensitive search safeguards for arrested persons (including women), Section 53 mandating that medical examination of an arrested woman be conducted only by or under supervision of a female medical officer (or female registered medical practitioner), Section 38 recognising the right of an arrested person to meet an advocate during interrogation, and Section 341 on legal aid at State expense for those without sufficient means.<sup>2</sup> Institutional neglect must also be understood against the long administrative evolution of prisons—from punitive confinement to “correctional” language—without a commensurate gender-sensitive infrastructure on the ground. While prison administration is guided by executive policy and manuals, the persistent gap between normative standards and lived conditions is visible in overcrowding, staff shortages, inadequate health services, weak grievance systems, and the heightened vulnerability of women to custodial violence and stigma. The Model Prison Manual, 2016 expressly addresses women prisoners, including provisions for women’s health, pregnancy, and children living with mothers inside prisons, indicating that policy recognition exists even

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<sup>2</sup> “United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),” *OHCHR available at:* <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial> (last visited April 28, 2026).

where implementation lags.<sup>3</sup>

In contemporary India, women constitute a small but significant share of inmates and are disproportionately impacted by undertrial detention, poverty, lack of legal representation, and family abandonment. NCRB reporting and secondary analyses of Prison Statistics India (PSI) 2023 highlight that women are a minority of the prison population but face systemic deficits in gender-responsive facilities and services, reinforcing the central theme of “invisibility” behind prison walls. This study therefore evaluates how procedural law (BNSS) and the new substantive and evidentiary frameworks—Bharatiya Nyaya Sanhita, 2023 (BNS) and Bharatiya Sakshya Adhiniyam, 2023 (BSA)—interact with prison realities, particularly where women are criminalised, detained as undertrials, or trapped in cycles linked to domestic abuse and socio-economic vulnerability (for example, BNS Section 85 on cruelty by husband/relatives; BNS Section 80 defining dowry death referenced for evidentiary presumptions; and BSA Section 118 presumption as to dowry death).

### 1.1 Meaning and Scope of Women Prisoners in India

Women prisoners in India include undertrial women, convicted women, detenues, and women held for interrogation or transit, and the scope of their rights extends from the moment of arrest through custody, trial, imprisonment, and release. Under the BNSS, 2023, protections relevant to women begin at arrest: Section 43(1) presumes a woman’s submission to custody on oral intimation and restricts physical contact by male police officers in making an arrest; Section 43(5) bars arrest of women after sunset and before sunrise except in exceptional circumstances with prior permission from the Magistrate of the first class. These procedural safeguards are not merely formalities; they define legality of custody and operate as the first barrier against institutional abuse.<sup>4</sup>

The scope further includes protection of bodily integrity and dignity during custody. BNSS Section 49 regulates search of an arrested person and requires decency-sensitive procedures, while BNSS Section 53 mandates that medical examination of an arrested woman must be conducted only by or under supervision of a female medical officer (or female registered medical practitioner). In addition, access-to-justice safeguards are central to scope: BNSS Section 38 recognises the right of

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<sup>3</sup> “Report on ‘Women in Prisons’ launched by the Ministry of Women and Child Development.,” *available at*: <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1536513> (last visited April 28, 2026).

<sup>4</sup> Arushi Bajpai & Vaidehi Sharma, “Unmasking Hardship Of Women Undertrials In India” *Live Law*, 28 March 2025.

an arrested person to meet an advocate of choice during interrogation, and BNSS Section 341 obligates State-supported legal aid where the accused lacks means, which is critical for women who face poverty, illiteracy, and social abandonment.<sup>5</sup>

## 1.2 Historical Development of Prison Administration and Gender Concerns

Indian prison administration evolved primarily as a security-and-discipline framework, and gender concerns entered comparatively late as “special provisions” rather than structural redesign. Over time, policy instruments began to recognise that women experience imprisonment differently due to pregnancy, reproductive health needs, caregiving roles, privacy requirements, and higher vulnerability to abuse. The Model Prison Manual, 2016 marks an important administrative milestone by setting out guidance on women’s health screening with privacy safeguards, pregnancy and childbirth-related care, and provisions for children residing with incarcerated mothers, indicating an institutional shift from mere containment towards minimum standards of dignity.<sup>6</sup>

Government policy discourse has also formally acknowledged the need for systemic reforms specific to women prisoners, including mental health support, legal aid, and reintegration measures. The Ministry of Women and Child Development’s report on women in prisons and related official releases reflect a rights-and-welfare orientation, yet the persistence of overcrowding, understaffing, and fragmented accountability shows that gender concerns often remain under-implemented. This historical gap between “recognition” and “realisation” is central to understanding institutional neglect as an administrative pattern rather than an isolated failure.

## 1.3 Status and Condition of Women Prisoners in Contemporary India

Contemporary prison conditions for women are shaped by a combination of high undertrial proportions, limited women-specific facilities, and insufficient medical and psychological services. Analyses drawing from NCRB Prison Statistics India (PSI) 2023 indicate women form a small fraction of the overall prison population yet face heightened vulnerability due to inadequate gender-sensitive infrastructure and services. These deficits translate into practical hardships—insufficient

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<sup>5</sup> “Section 49: Legal Procedure for Search of Arrested Person,” *Pahuja Law Academy* available at: <https://www.pahujalawacademy.com/section-49-search-of-arrested-person> (last visited April 28, 2026).

<sup>6</sup> “English Releases,” available at: <https://www.pib.gov.in/newsite/erecontent.aspx?relid=134687> (last visited April 28, 2026).

sanitation and menstrual hygiene access, weak access to specialised medical care, lack of privacy, and inadequate grievance redress—making “institutional neglect” a lived, daily condition rather than an abstract claim.

Procedural protections under the BNSS, 2023 are especially relevant because many women remain in custody as undertrials, where detention should not become punishment by default. Section 38 (access to advocate during interrogation) and Section 341 (legal aid at State expense) directly impact women’s ability to secure bail, contest illegal detention, and resist coercive interrogation practices, while Section 53 (female-supervised medical examination) and Section 43(5) (restriction on night arrests) respond to gendered risks of custodial abuse. Where these safeguards are ignored, women’s custody becomes procedurally unsafe and substantively degrading, intensifying the invisibility of rights within prison walls.

Women’s pathways into incarceration also intersect with gendered violence and family structures, where criminalisation and victimisation may overlap. The new substantive and evidentiary frameworks—BNS, 2023 and BSA, 2023—remain relevant in understanding women’s criminal justice exposure: BNS Section 85 addresses cruelty by husband or his relatives, while evidentiary rules such as BSA Section 118 (presumption as to dowry death, linked to the definition of dowry death in BNS Section 80) demonstrate how women’s experiences of domestic abuse connect to criminal law narratives that often influence policing, detention, and trial outcomes. A prison-based rights study must therefore address both the prison institution and the broader legal pathways that channel women into custodial settings.<sup>7</sup>

#### **1.4 Objectives of the Study**

1. To examine the nature and extent of rights protections available to women prisoners under the BNSS, 2023 and allied prison standards.
2. To identify major forms of institutional neglect affecting women prisoners (health, hygiene, safety, legal access, and dignity).
3. To evaluate gaps between policy standards (including the Model Prison Manual, 2016) and actual prison practices affecting women.

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<sup>7</sup> Vinay Rawat, “Impact Of BNSS 2023 On Women’s Rights In Live-in-relationships” *Lawcurb*, 2025 available at: <https://www.lawcurb.in/post/impact-of-bnss-2023-on-women-s-rights-in-live-in-relationships> (last visited April 28, 2026).

4. To analyse how procedural safeguards (arrest, search, medical examination, legal aid) operate or fail in real custodial contexts for women.

### **1.5 Research Questions**

1. What core rights and procedural safeguards protect women prisoners under the BNSS, 2023, and how effectively are they implemented?
2. What are the principal indicators of institutional neglect faced by women prisoners in India today?
3. How do prison policies and manuals address women's needs, and where do administrative failures most frequently occur?
4. What barriers prevent women prisoners from accessing legal aid, effective representation, and timely justice while in custody?

### **1.6 Research Methodology**

This study adopts a doctrinal research methodology, relying on primary legal materials and authoritative policy documents to evaluate women prisoners' rights and institutional neglect. The analysis centres on the BNSS, 2023 (procedural safeguards during arrest, custody, interrogation, medical examination, and legal aid), supported by relevant provisions of the BNS, 2023 and BSA, 2023 where they shape women's criminal justice exposure. The study also examines administrative standards, particularly the Model Prison Manual, 2016, and uses official prison data (NCRB PSI) to contextualise doctrinal findings. The method is primarily library-based and analytical, focused on identifying normative duties, implementation gaps, and reform priorities aligned with the chapter scheme.

### **1.7 Research Gap**

Existing scholarship strongly documents women prisoners' vulnerabilities and the implementation gap between standards and practice, but it often relies on older procedural frameworks and does not fully integrate the operational impact of the new criminal laws—especially how BNSS, 2023 safeguards on arrest, medical examination, counsel access, and legal aid translate into prison entry, classification, and continued detention outcomes. There is also limited integrated analysis linking (i) gendered pathways into custody, (ii) institutional routines that reproduce neglect, and (iii)

measurable accountability tools (monitoring, audits, grievance systems) tailored specifically to women and mothers with children.

## **2 CONSTITUTIONAL AND HUMAN RIGHTS FRAMEWORK**

### **2.1 Constitutional Protection of Dignity, Equality and Life of Women Prisoners**

Women prisoners, despite lawful confinement, remain constitutional rights-holders, and the State's power to detain is limited by Article 21 (life and personal liberty) which requires humane custody and "procedure established by law", along with Articles 14 and 15 which mandate equality and prohibit discrimination on grounds including sex, while Article 15(3) permits special measures for women to secure substantive equality inside custodial institutions. In practical terms, these guarantees demand gender-sensitive safety, privacy, healthcare, and access to justice in prisons, and they also guide how new criminal procedure must be applied to women in custody, including safeguards in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) such as Section 43(5) (restriction on arrest of women at night with Magistrate permission), Section 53 (female-supervised medical examination of arrested women), and Section 38 (right to meet an advocate during interrogation).<sup>8</sup>

Constitutional design also embeds a welfare and access-to-justice orientation relevant to women prisoners through Article 39A (equal justice and free legal aid), which strengthens the obligation to provide effective legal services to women undertrials who face poverty, stigma, and abandonment, and aligns with BNSS Section 341 (legal aid at State expense where the accused lacks means). Further, Article 23 (prohibition of traffic in human beings and forced labour) and Article 42 (just and humane conditions of work and maternity relief) together reinforce a custody framework where prison labour, medical care, and pregnancy-related support must meet minimum dignity standards, especially for women who are pregnant or lactating in custody.

### **2.2 Protection against Discrimination within the Criminal Justice System**

Non-discrimination for women in the criminal justice system requires both formal equality and context-sensitive safeguards, because identical treatment can still produce unequal outcomes when

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<sup>8</sup> "The right to life and personal liberty under Article 21: A timeline," *Supreme Court Observer*, 2025 available at: <https://www.scobserver.in/journal/the-right-to-life-and-personal-liberty-under-article-21-a-timeline/> (last visited April 28, 2026).

women face heightened risks of custodial violence, privacy invasion, and health neglect. Constitutional guarantees under Articles 14 and 15 require that policing, arrest, search, medical examination, and detention practices do not impose sex-based disadvantage, while enabling legitimate protective differentiation under Article 15(3). The BNSS operationalises non-discrimination through specific gender protections—most importantly Section 43(1) limiting physical contact by male officers during arrest, Section 43(5) restricting night arrests of women, Section 49 regulating search with decency safeguards, and Section 53 requiring female-supervised medical examination—so equality is protected through enforceable procedure rather than mere policy language.<sup>9</sup>

Discrimination also appears structurally through undertrial detention, delayed access to counsel, and evidentiary vulnerabilities, which can disproportionately harm women with limited resources or support systems. Here, the “new criminal laws” matter in a connected way: the *Bharatiya Sakshya Adhiniyam, 2023 (BSA)* lays down rules for fair trial evidence, and its gender-sensitive evidentiary directions (including restrictions on irrelevant character/sexual experience material in certain contexts) must work alongside BNSS Section 38 (meeting advocate during interrogation) and BNSS Section

341 (legal aid) to ensure women are not coerced, shamed, or procedurally disadvantaged at the investigation stage. The combined constitutional mandate and statutory procedure therefore frame discrimination as both a rights violation and an institutional failure that increases wrongful detention and custodial vulnerability.

### **2.3 Human Rights Standards Governing Treatment of Women in Custody**

International human rights standards provide detailed content to dignity in custody, particularly through the UN Bangkok Rules (women prisoners and non-custodial measures) and the Nelson Mandela Rules (minimum standards for all prisoners). These instruments emphasise women’s specific needs—privacy, personal hygiene, gender-sensitive healthcare including reproductive health, mental health support, safeguards against abuse, and maintenance of family ties—and treat such measures as minimum standards rather than discretionary welfare. When read with

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<sup>9</sup> “Access to justice: discrimination against women in criminal justice systems,” *Penal Reform International*, 2012 available at: <https://www.penalreform.org/resource/access-justice-discrimination-women-criminal-justice-systems/> (last visited April 28, 2026).

constitutional guarantees (Articles 14, 15, 21, 39A), these standards strengthen the argument that neglect of menstrual hygiene, inadequate medical care, unsafe searches, or denial of contact with children is not merely “administrative inconvenience” but a rights breach demanding correction.<sup>10</sup> Treaty standards also reinforce equality and dignity: the International Covenant on Civil and Political Rights (ICCPR) requires humane treatment of persons deprived of liberty and mandates equal enjoyment of civil and political rights by men and women, while CEDAW requires States to eliminate discrimination against women across legal and social domains, which includes the carceral context where women suffer compounded stigma and structural disadvantage. These frameworks are particularly relevant for India’s prison system because they shift the focus from “prison discipline” to “rights-based custody”, supporting gender-sensitive prison policies and accountability mechanisms aimed at preventing abuse and neglect rather than reacting after harm occurs.

#### **2.4 State Responsibility for Safeguarding Women Prisoners’ Rights**

State responsibility in prison governance is not limited to refraining from illegal violence; it includes affirmative duties to ensure safe custody, access to healthcare, legal aid, and grievance mechanisms. Constitutionally, this flows from Article 21 and Article 39A, while administratively it is expressed through national guidance like the Model Prison Manual, 2016, which dedicates focused provisions to women prisoners, staffing patterns, health and hygiene requirements, pregnancy and childcare arrangements, and rights/duties communication upon admission. Institutional neglect becomes a State responsibility issue because prisons are closed environments where the State exercises near-total control, so failure to provide minimum standards is attributable to governmental omission as much as commission.<sup>11</sup>

A modern articulation of State responsibility is also visible in the Model Prisons and Correctional Services Act, 2023, which is designed to reframe prison administration around correction, rehabilitation, and transparent governance, and expressly highlights safety and special needs of

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<sup>10</sup> “United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),” *OHCHR available at:* <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial> (last visited April 28, 2026).

<sup>11</sup> “COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2004 VOLUME II,” *available at:* <https://www.govinfo.gov/content/pkg/CPRT-109JPRT23016/html/CPRT-109JPRT23016.htm> (last visited April 28, 2026).

women and transgender prisoners in public policy discourse. Even as a model law for States/UTs, it indicates the expected standard of governance—classification, oversight structures, and rehabilitative focus—thereby strengthening the argument that continued neglect of women’s prison conditions represents a failure to meet evolving administrative duties consistent with constitutional and human rights norms.

### **3 STATUTORY AND POLICY SAFEGUARDS FOR WOMEN PRISONERS**

#### **3.1 Prison Laws and Rules Applicable to Women Prisoners**

Women prisoners’ day-to-day conditions are chiefly governed by State prison rules/jail manuals and national model standards rather than a single uniform central statute, which creates uneven protections across jurisdictions. The Model Prison Manual, 2016 functions as a key policy benchmark for States/UTs, providing detailed guidance on women’s custody—separate accommodation, female staff deployment, healthcare including reproductive and mental health, hygiene needs, pregnancy management, and care for children living with mothers—thereby acting as the closest “national minimum” standard even where State rules differ. This model framework is essential in a rights study because institutional neglect often arises from weak adoption, inadequate budgeting, and poor compliance monitoring rather than absence of written standards.

Policy reform momentum is also visible through the Model Prisons and Correctional Services Act, 2023, which provides a contemporary legislative template emphasizing safe custody, rehabilitation, and structured prison governance. Its relevance to women prisoners lies in its correctional orientation—reducing purely punitive management, strengthening institutional accountability, and creating formal bodies and processes that can address gender-specific needs as part of “core prison administration” rather than optional welfare. In a doctrinal sense, this model law complements constitutional rights by describing the institutional architecture through which those rights should be implemented in prisons.

#### **3.2 Safeguards Relating to Arrest, Detention and Custodial Treatment**

The most immediate statutory safeguards for women arise at arrest and early detention, because this is the stage where abuse risks, coercion, and illegal confinement are highest. The BNSS, 2023 provides key gender-sensitive protections: Section 43(5) restricts arrest of women after sunset and before sunrise except with prior Magistrate permission in exceptional circumstances; Section 43(1)

limits physical contact by male officers during arrest; Section 49 regulates searches with decency safeguards; and Section 53 mandates female-supervised medical examination of an arrested woman. These provisions are crucial in a prison-rights study because illegal or abusive custody practices at entry often continue as normalized neglect inside jail, and procedural compliance is the first barrier against institutional invisibility.<sup>12</sup>

Custodial rights also depend on access to legal representation and fair procedure, especially for women undertrials who may remain in prison due to lack of counsel, inability to furnish bail requirements, or delayed applications. The BNSS directly supports this through Section 38 (right to meet an advocate of choice during interrogation) and Section 341 (legal aid at State expense where the accused lacks sufficient means), which align with the constitutional commitment under Article 39A. When these safeguards are weakly implemented—such as delayed production, ineffective legal aid, or denial of counsel access—detention becomes punitive in effect, deepening gendered vulnerability and institutional neglect.

### **3.3 Policy Measures for Health, Hygiene and Welfare in Women's Prisons**

Policy safeguards for women prisoners must treat health and hygiene as rights-linked obligations rather than charity, because prisons control the conditions that determine whether women can maintain basic dignity. The Model Prison Manual, 2016 provides structured guidance on women's health screening, access to medical services, mental health support, menstruation-related hygiene provisions, nutrition, and special care for pregnancy and childbirth, and it also addresses arrangements for children living with incarcerated mothers. These policy standards become legally significant when read with Article 21 (dignity) and international minimum standards such as the Bangkok Rules, which specifically require gender-responsive healthcare and hygiene supplies for women in custody.<sup>13</sup>

A contemporary governance lens also requires linking welfare measures to measurable prison outcomes documented in official data. Prison Statistics India 2023 (NCRB) provides national-level indicators on prison population, undertrial proportions, occupancy pressures, and special

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<sup>12</sup> Vajiram Content Team, "Madras HC on Night Arrests of Women: BNSS & CrPC Provisions Explained" *vajiramandravi*, 26 February 2025.

<sup>13</sup> "United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)," *OHCHR available at*: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial> (last visited April 28, 2026).

categories including women prisoners with children, enabling assessment of whether health and welfare policies have adequate infrastructure and staffing to be meaningful. Such data-supported evaluation is essential because institutional neglect often hides behind “policy on paper”, and women’s issues—sanitation, medical care, psychological support, and childcare—are among the first to be under-provisioned when prisons operate beyond capacity.

### **3.4 Institutional Mechanisms for Monitoring Prison Administration**

Monitoring mechanisms are central to preventing neglect, because prisons are closed institutions with limited public visibility and high power imbalance. The Model Prison Manual, 2016 endorses prison visiting systems and oversight arrangements, and institutionalises the idea that periodic inspection, reporting, and grievance review must occur as part of routine administration. Complementing this, the Bureau of Police Research and Development (BPRD) has produced guidance such as a Handbook for Board of Visitors, reflecting a structured approach to independent feedback and institutional correction. For women prisoners, monitoring must be gender-sensitive—ensuring that privacy violations, custodial harassment, denial of hygiene supplies, and pregnancy-related neglect are audited with seriousness and confidentiality.

The Model Prisons and Correctional Services Act, 2023 further strengthens the monitoring narrative by proposing formal governance bodies and administrative structures designed to improve transparency, accountability, and rehabilitation outcomes. Even as a model framework, it signals that modern prison administration should be measurable and supervised through dedicated institutional arrangements rather than left to ad-hoc internal discretion. This is particularly important for women prisoners because neglect frequently occurs in “in-between spaces” of discretion—medical referrals, staff behaviour, search procedures, and childcare access—where monitoring converts discretion into accountable duty.

### **3.5 Case Laws**

*Sunil Batra v. Delhi Administration*<sup>14</sup> Court rejected the “hands-off” approach and held that prisoners retain Article 21 dignity and humane treatment; custodial power is limited by constitutional discipline, aligning with present procedural safeguards in BNSS, 2023 on lawful

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<sup>14</sup> Sunil Batra v. Delhi Administration, (1978) 4 SCC 494; AIR 1978 SC 1675

arrest and custody.

*Sheela Barse v. State of Maharashtra*<sup>15</sup> Court addressed women prisoners' access to legal assistance and humane conditions, reinforcing Articles 14, 15, 21 and the constitutional mandate of legal aid under Article 39A, now operationalised through BNSS, 2023 Section 341 (legal aid) and Section 38 (meeting advocate).

*Nilabati Behera v. State of Orissa*<sup>16</sup> Court recognised public law compensation for custodial death as a remedy for Article 21 violation, fixing State accountability for harm in custody—central to combating institutional neglect in prisons.

*Hussainara Khatoon (I) v. Home Secy., State of Bihar*<sup>17</sup> Court foregrounded speedy trial and undertrial justice under Article 21 and reinforced Article 39A legal aid, directly relevant to women undertrials and supported by BNSS, 2023 Section 341.

*R.D. Upadhyay v. State of A.P.*<sup>18</sup> Court issued guidelines for children living with incarcerated mothers, integrating Articles 14, 15(3), 21 and custodial welfare duties, shaping standards for mother-child arrangements inside prisons.

## 4 CONDITIONS OF CONFINEMENT AND INSTITUTIONAL NEGLECT

### 4.1 Overcrowding, Infrastructure Deficiencies and Living Conditions

Overcrowding and infrastructure deficits intensify institutional neglect by converting minimum standards into practical impossibilities—insufficient beds, poor ventilation, restricted mobility, limited access to toilets, and reduced privacy for women. Prison Statistics India 2023 (NCRB) provides national data that helps demonstrate systemic pressure on prison capacity and highlights patterns such as high undertrial populations that keep prisons congested for long periods. For women prisoners, overcrowding produces distinct harms: weakened privacy, increased vulnerability to harassment, inadequate hygiene management, and reduced access to medical consultation, making confinement conditions a direct dignity issue under Article 21 rather than a purely administrative concern.

International standards treat accommodation and living conditions as minimum rights, not optional

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<sup>15</sup> *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96; AIR 1983 SC 378

<sup>16</sup> *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746; AIR 1993 SC 1960

<sup>17</sup> *Hussainara Khatoon (I) v. Home Secy., State of Bihar*, (1980) 1 SCC 98; AIR 1979 SC 1369

<sup>18</sup> *R.D. Upadhyay v. State of A.P.*, (2006) 3 SCC 422; AIR 2006 SC 1946

improvements. The Nelson Mandela Rules require humane accommodation, sanitation, and respect for inherent dignity, while the Bangkok Rules stress that women's placement, privacy, and access to appropriate services must reflect caretaking responsibilities and gender-specific needs. When Indian prisons fall short—through cramped barracks, lack of separate facilities, or inadequate staffing—neglect becomes institutional because it is rooted in systemic planning failures rather than isolated misconduct, and the invisibility of women's needs is amplified when infrastructure design assumes a male prisoner as the default.<sup>19</sup>

#### **4.2 Health Care, Mental Well-Being and Reproductive Needs**

Women's prison health requires gender-responsive services that address menstruation, reproductive health, pregnancy, lactation, and trauma-informed mental healthcare, but institutional neglect often manifests as delayed referrals, lack of privacy during consultation, shortage of female medical practitioners, and weak mental health screening. The Model Prison Manual, 2016 recognises the need for proper medical examination, women's healthcare facilities, and special attention to pregnant prisoners and mothers, aligning with international standards under the Bangkok Rules that require adequate healthcare and specialised services for women in custody. The rights basis is constitutional Article 21, because denial of basic healthcare in custody amounts to denial of humane life conditions under State control.

At the earliest criminal justice stage, the BNSS, 2023 provides a crucial medical dignity safeguard through Section 53, requiring medical examination of an arrested woman to be conducted only by or under supervision of a female medical officer (or female registered medical practitioner). This matters for women's bodily integrity and prevention of custodial abuse, and it connects to later prison healthcare because inadequate medical documentation and poor early screening can conceal violence, exacerbate untreated conditions, and increase trauma. Thus, healthcare neglect is both procedural and institutional—beginning at arrest and continuing through confinement—unless the BNSS safeguards are strictly implemented in practice.

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<sup>19</sup> United Nations, "The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty" *United Nations available at*: <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty> (last visited April 28, 2026).

### 4.3 Sanitation, Nutrition and Gender-Specific Requirements

Sanitation and nutrition are not neutral necessities for women prisoners; they carry gender-specific dimensions such as menstrual hygiene management, privacy in bathing and toileting, safe disposal systems, and adequate nutrition for pregnant or lactating women. The Bangkok Rules specifically address women's personal hygiene, and the Model Prison Manual, 2016 provides guidance on hygiene standards, clothing, bedding, and dietary needs with special attention to women and mothers. When prisons fail to supply sanitary materials, clean water, functional toilets, or adequate food, the harm is compounded by shame, infection risk, and loss of dignity, which directly undermines constitutional protections of humane life under Article 21.<sup>20</sup>

Institutional neglect also appears where prison systems treat “women-specific requirements” as dispensable under resource stress, especially in overcrowded settings documented in NCRB Prison Statistics India 2023. Data-backed discussion is important because it shows neglect is structural—linked to capacity strain, staffing shortages, and weak procurement systems—rather than episodic. A rights-based framework therefore requires that sanitation and nutrition for women be monitored as compliance indicators, not merely recorded as general “prison amenities”, because women experience distinct harms when these basics are compromised.

### 4.4 Violence, Abuse and Neglect within Custodial Institutions

Custodial abuse against women can include harassment, degrading searches, coercion, denial of medical care, retaliation for complaints, and psychological intimidation, with neglect functioning as a “silent” form of violence through continuous deprivation. Constitutional protections under Articles 14, 15, and 21 require the State to prevent such abuse through staffing, training, complaint mechanisms, and independent monitoring, while the Bangkok Rules require safeguards against abuse and stress gender-sensitive supervision and search practices. The BNSS reinforces this at the entry stage through Section 43(1) (limits physical contact during arrest), Section 43(5) (limits night arrest of women), and Section 49 (search safeguards), all of which aim to reduce exposure to abuse and indignity during police custody and transit.

Institutional neglect becomes entrenched when grievance systems are weak, inspections are

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<sup>20</sup> Marie Claire Van Hout and Rosemary Mhlanga-Gunda, “Contemporary women prisoners health experiences, unique prison health care needs and health care outcomes in sub Saharan Africa: a scoping review of extant literature,” 18 *BMC international health and human rights* 31 (2018).

irregular, and accountability is internalised within prison hierarchies, which discourages reporting and normalises abuse. The Model Prison Manual, 2016 and oversight guidance like the Handbook for Board of Visitors provide administrative mechanisms intended to surface complaints and improve compliance, but their effectiveness depends on regular functioning, independent access, and gender-sensitive auditing. For women prisoners, meaningful protection requires that monitoring processes explicitly track incidents of harassment, access to female staff, privacy during searches, medical referrals, and protection from retaliation.

## **5 RIGHTS OF VULNERABLE GROUPS AMONG WOMEN PRISONERS**

### **5.1 Rights of Pregnant Women and Mothers in Custody**

Pregnant women and mothers in custody face heightened vulnerability because pregnancy, childbirth, and postnatal recovery require timely medical attention, privacy, nutrition, and freedom from degrading treatment. The Bangkok Rules emphasise non-custodial alternatives where possible, specialised healthcare, and safeguards around pregnancy and childbirth, while the Model Prison Manual, 2016 sets policy guidance on prenatal and postnatal care, diet, accommodation, and arrangements for mothers and infants. These safeguards derive their constitutional force from Article 21 and equality guarantees under Articles 14 and 15, because pregnancy-related neglect in custody is a direct denial of dignity and humane treatment under State control.<sup>21</sup>

A procedural safeguard that supports maternal rights at the earliest stage is BNSS Section 53, requiring female-supervised medical examination for arrested women, which is critical for identifying pregnancy, injuries, and health risks at the point of entry into custody. Proper documentation and immediate referral can prevent miscarriage risk, untreated complications, or concealment of abuse, and it strengthens accountability across police lock-ups, transit, and prison admission processes. Thus, maternal rights must be understood as a continuum from arrest to confinement, where neglect at any point can produce irreversible harm.

### **5.2 Rights of Children Living with Incarcerated Mothers**

Children living with incarcerated mothers raise a dual-rights issue: the mother's custody rights and

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<sup>21</sup> "United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)," *OHCHR available at*: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial> (last visited April 28, 2026).

the child's developmental rights, requiring prison systems to provide nutrition, health services, safe living conditions, and access to early childhood care. The Model Prison Manual, 2016 contains dedicated guidance on children residing with mothers, and institutional discussion is supported by public datasets and reports concerning women prisoners with children, indicating that this is a persistent governance responsibility rather than an exceptional scenario. In a rights-based framework, "institutional neglect" includes failure to provide child-friendly spaces, healthcare, vaccinations, and education access, which intensifies the intergenerational impact of women's incarceration.<sup>22</sup>

International standards reinforce these duties: the Bangkok Rules stress that women's caretaking responsibilities must be accounted for in placement and services, and that family ties should be maintained, while the Nelson Mandela Rules provide baseline requirements for humane accommodation, healthcare, and dignity, which necessarily extend to children living in prison environments. When children are treated as invisible "attachments" to incarcerated mothers, custodial neglect expands beyond prisoner rights into broader human rights failures that require specialised policy and monitoring responses.

### **5.3 Concerns of Undertrial Women, Elderly Prisoners and Women with Disabilities**

Undertrial women are often the most vulnerable group because detention without conviction can become prolonged due to poverty, lack of counsel, or systemic delay, and this vulnerability is magnified for elderly women and women with disabilities who require accessible infrastructure and consistent healthcare. The BNSS, 2023 addresses key fairness safeguards relevant to these groups through Section 38 (meeting advocate during interrogation) and Section 341 (legal aid), which are essential to prevent indefinite pre-trial incarceration driven by procedural disadvantage rather than legal necessity. The constitutional anchor remains Articles 21 and 39A, because access to justice is integral to meaningful liberty.<sup>23</sup>

The Model Prison Manual, 2016 and modern prison reform discourse emphasise classification, welfare services, and support systems that should include disability accommodations and age-sensitive healthcare, while NCRB Prison Statistics India 2023 supports empirical evaluation of

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<sup>22</sup> Camille Kramer et al., "Maternal health and incarceration: advancing pregnancy justice through research," 13 *Health & justice* 36 (2025).

<sup>23</sup> Arushi Bajpai & Vaidehi Sharma, "Unmasking Hardship Of Women Undertrials In India" *Live Law*, 28 March 2025.

undertrial prevalence and prison capacity stress, which often explains why special-needs care is deprioritised. A rights study must treat these groups as bearing “heightened positive obligations” on the State—meaning that equality requires additional support, not identical treatment, because structural conditions otherwise exclude them from basic services.

## **6 ACCESS TO JUSTICE AND PRISON REFORM**

### **6.1 Legal Aid, Representation and Fair Trial Rights of Women Prisoners**

Access to justice is the practical bridge between rights “on paper” and rights “in prison”, and women prisoners often face barriers such as illiteracy, lack of family support, fear of stigma, and inability to pay for counsel. Constitutionally, Article 39A mandates equal justice and free legal aid, while the BNSS, 2023 provides operational safeguards through Section 38 (right to meet advocate during interrogation) and Section 341 (legal aid at State expense), which are essential for women undertrials seeking bail, challenging illegal detention, or resisting coercion. Without effective legal aid, institutional neglect takes a procedural form—women remain invisible not only to society but also to the justice system that should hear them.<sup>24</sup>

Fair trial rights also depend on credible evidence processes, and the Bharatiya Sakshya Adhiniyam, 2023 (BSA) structures evidentiary rules to support fair adjudication, which is vital where women face moral policing, character-based narratives, or pressure to confess. A rights-based prison study must connect custody conditions to trial fairness because coercive interrogation, lack of counsel, and poor medical documentation can distort evidentiary reliability, resulting in prolonged undertrial detention or wrongful outcomes. Thus, fair trial protection for women prisoners requires integrated compliance with BNSS safeguards and evidentiary fairness under BSA.

### **6.2 Role of Judiciary, Prison Authorities and Oversight Bodies**

Judicial oversight, prison administration, and independent monitoring together constitute the accountability ecosystem that can prevent institutional neglect from becoming routine. While prison authorities manage daily custody, constitutional guarantees require that detention remains lawful, dignified, and subject to oversight mechanisms that can receive complaints and mandate

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<sup>24</sup> Mohd Imran, “Access to Justice: Need for Reforms” *Law Society, Department of Law, Aligarh Muslim University, Murshidabad Centre (W.B.)* (2018).

corrective action. Policy frameworks like the Model Prison Manual, 2016 and governance tools like BPRD's Handbook for Board of Visitors institutionalise inspection and feedback systems designed to detect rights violations, and these become especially important for women prisoners whose complaints may be suppressed by fear, stigma, or dependence on prison staff.<sup>25</sup>

The modern reform direction also aims to formalise oversight and governance structures through the Model Prisons and Correctional Services Act, 2023, which reflects an institutional commitment to transparent prison administration, classification, and rehabilitative management. For women prisoners, the role of oversight bodies must include gender-responsive audits—availability of female staff, privacy in searches, access to hygiene supplies, pregnancy care, child-related arrangements, and effective legal aid access—so that “monitoring” is not reduced to security inspection but becomes rights compliance supervision.

### **6.3 Correctional Services, Rehabilitation and Skill Development Measures**

Correctional programming for women must account for social realities—caregiving burdens, trauma histories, disrupted education, and post-release stigma—so rehabilitation cannot be generic or male-oriented. The Model Prisons and Correctional Services Act, 2023 and prison reform guidance emphasise reformation, vocational training, and reintegration, which are essential to converting incarceration from mere exclusion into lawful correction. In a rights framework, denying women meaningful education, skill training, counselling, and reintegration support is a form of institutional neglect because it perpetuates dependency, recidivism risk, and social exclusion after release.

International standards reinforce this rehabilitative obligation: the Nelson Mandela Rules set minimum requirements for humane custody and constructive activities, while the Bangkok Rules emphasise gender-specific rehabilitation and non-custodial measures where appropriate, recognising that women are often incarcerated for non-violent and socio-economically driven offences and may have experienced abuse. Therefore, correctional services must be structured to include trauma-informed counselling, health and hygiene support, family contact facilitation, and skill-building that is market-relevant and stigma-sensitive for women.

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<sup>25</sup> Uzair Ahmad Khan, “iPleaders Blog - Legal Backdrop of Prison Reforms” *iPleaders*, 2019 available at: <https://blog.ipleaders.in/legal-backdrop-prison-reforms/> (last visited April 28, 2026).

#### **6.4 Need for Gender-Sensitive Prison Reform in India**

Gender-sensitive reform is necessary because women's imprisonment is not simply a smaller version of men's imprisonment; it has distinct constitutional, health, privacy, and family consequences that require tailored standards, staffing, and facilities. The reform agenda must connect constitutional rights (Articles 14, 15, 21, 39A) with enforceable procedural safeguards under the BNSS, 2023 (especially Sections 43(1), 43(5), 49, 53, 38, 341) and with modern institutional design under the Model Prisons and Correctional Services Act, 2023, so women's needs are treated as core governance requirements. Without this integration, prisons remain structurally male-centric, and women's dignity becomes contingent on discretion rather than guaranteed by law.<sup>26</sup>

Evidence and accountability must guide reform priorities, and official data such as NCRB Prison Statistics India 2023 enables evaluation of undertrial proportions, occupancy stress, and special categories like women prisoners with children, which are essential for resource planning and compliance measurement. A gender-sensitive reform approach must therefore be data-driven (to identify hotspots of neglect), standards-driven (Bangkok Rules and Mandela Rules), and procedure-driven (BNSS safeguards), ensuring women are no longer "invisible behind bars" but visible to law, policy, and oversight in measurable and enforceable ways.

### **7 CONCLUSION AND RECOMMENDATIONS**

#### **7.1 Conclusion**

Women prisoners' rights in India are clearly grounded in constitutional guarantees of equality and dignity (Articles 14, 15, 21) and strengthened by access-to-justice commitments (Article 39A), while the BNSS, 2023 provides enforceable procedural safeguards (notably Sections 43(5), 43(1), 49, 53, 38, 341) that directly address gendered risks in arrest, search, medical examination, and counsel access. Yet the persistence of overcrowding, inadequate gender-specific healthcare and hygiene, weak monitoring, and insufficient rehabilitative programming—evidenced through policy-practice gaps highlighted in the Model Prison Manual, 2016 and contextual indicators in NCRB Prison Statistics India 2023—shows that women remain structurally marginal within prison

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<sup>26</sup> Emily J Salisbury and Allison Crawford, "Gender-responsive treatment to improve outcomes for women and girls in correctional settings: foundations, limitations and innovations," 13 *Health & justice* 11 (2025).

governance. The central problem is therefore not absence of norms, but institutional neglect manifested through poor implementation, inadequate resources, limited accountability, and weak gender-sensitive oversight.<sup>27</sup>

International human rights standards provide further clarity on what lawful and humane custody must look like for women, particularly through the Bangkok Rules and the Nelson Mandela Rules, which treat gender-responsive healthcare, hygiene supplies, privacy, safety, and family contact as minimum standards rather than optional welfare. When the State fails to align prison practice with these standards—despite constitutional duties and modern reform templates like the Model Prisons and Correctional Services Act, 2023—women’s incarceration becomes a site of compounded discrimination, where punishment is intensified by neglect. A rights-based approach demands that visibility be restored through enforceable procedure, audited standards, and institutional accountability that treats women’s prison needs as core governance obligations.

## 7.2 Recommendations

A first set of reforms must focus on strict implementation of BNSS safeguards for women at arrest and early detention, because this is where abuse risks and illegal custody patterns begin. Police and prison intake systems should adopt mandatory compliance checklists for BNSS Section 43(5) (night arrest restriction), Section 43(1) (limits on physical contact during arrest), Section 49 (decency-sensitive search), and Section 53 (female-supervised medical examination), with documentation that can be audited by oversight bodies. Simultaneously, access to counsel must be operationalised through BNSS Section 38 (meeting advocate during interrogation) and BNSS Section 341 (legal aid), supported by functional legal aid clinics and regular lawyer access within women’s wards.

A second set of reforms must address conditions of confinement through enforceable minimum standards aligned to the Model Prison Manual, 2016, the Bangkok Rules, and the Nelson Mandela Rules, with special emphasis on menstrual hygiene supply chains, privacy in sanitation facilities, trauma-informed mental healthcare, and specialised reproductive health services. Prisons should adopt women-specific health protocols, ensure adequate female medical staff availability, and create child-friendly spaces and services for children living with incarcerated mothers, treating

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<sup>27</sup> “Limits to the Right to Access Justice,” *Drishti IAS* available at: <https://www.drishtiiias.com/daily-updates/daily-news-analysis/limits-to-the-right-to-access-justice> (last visited April 28, 2026).

these as measurable compliance indicators rather than discretionary welfare. Overcrowding and resource constraints highlighted in NCRB Prison Statistics India 2023 must be addressed through capacity planning and prioritisation of non-custodial measures where appropriate, consistent with global standards emphasising alternatives for women offenders.

A third set of reforms must strengthen institutional accountability and monitoring so neglect is detected early and corrected reliably. States/UTs should operationalise prison visiting mechanisms and independent inspections in line with the Model Prison Manual, 2016 and structured guidance like BPRD's Handbook for Board of Visitors, ensuring gender-sensitive audits that include privacy safeguards, availability of female staff, complaint handling timelines, and protection against retaliation. Finally, prison reform should adopt modern governance architecture reflected in the Model Prisons and Correctional Services Act, 2023, emphasising rehabilitation, skill development, and reintegration support tailored for women, including counselling, vocational training, and post-release linkage services that reduce stigma and family abandonment.



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