

The untold tale of pregnant women incarcerated in India: "BIRTH BEHIND BARS"

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Abstract

The issue of pregnant women prisoners and the rights of their unborn and young children remains one of the most neglected aspects of the criminal justice system in India. Although constitutional guarantees, judicial precedents, and international human rights standards recognize the right to dignity, health, and reproductive autonomy of incarcerated women, significant gaps continue to exist in policy implementation and prison administration. This paper examines the legal, social, and human rights concerns surrounding pregnancy and childbirth in prisons, with particular emphasis on the conditions faced by undertrial and convicted women prisoners. It analyzes the challenges relating to prenatal and postnatal healthcare, custodial violence, inadequate prison infrastructure, overcrowding, and the psychological impact of incarceration on both mothers and children. The study critically evaluates the landmark judgment in *R.D. Upadhyay v. State of Andhra Pradesh*, prison reform measures, and constitutional protections under Article 21 of the Constitution of India. It further explores the long-term consequences of prison-based upbringing on children and highlights deficiencies in data collection regarding pregnant inmates. The paper argues for a gender-sensitive correctional framework that prioritizes maternal healthcare, reproductive rights, child welfare, and rehabilitation. It concludes by recommending comprehensive policy reforms, effective implementation of existing guidelines, improved healthcare facilities, enhanced monitoring mechanisms, and greater recognition of the rights of unborn children and children residing with incarcerated mothers.

Keywords: Key words - Women , rehabilitation, prison , reforms , criminal justice etc.

1. Introduction –

Three main pillars make up the criminal justice system. These include the courts, which both prosecute and defend, law enforcement organisations like the police, and detention and oversight organizations like jails and the prison system. I shall be concentrating on the third pillar—the jail system—in this essay. The prison system seeks to fulfil the element of rehabilitation in addition to the principles of deterrence, prevention, and retribution. It is a reality that inmates are more likely to experience psychological and mental health issues, and they typically live in upsetting conditions that hurt both the body and the mind. Because they experience discrimination both as women and as inmates, female inmates are more likely than male inmates to experience these psychological and mental health issues. Because they experience discrimination both as women and as inmates, female inmates are more likely than male inmates to experience these psychological and mental health issues. Women incarcerated are more likely to experience sexual and physical abuse, neglect and violence, and prejudice based on their gender. ¹The prison system as a whole has been designed for male inmates since, historically, the majority of those who faced prosecution and ended up behind bars were men. This is similar to the majority of challenges that women encounter, but despite their seriousness, they have received little attention. In Rule 81 of the Standard Minimum Rules for the Treatment of Prisoners ², the UN appears to have acknowledged this problem and stressed the significance of protecting female inmates. They achieved this by ensuring that female inmates would be under the sole supervision of a female staff member, that male staff members would not be permitted to enter women's prisons unless accompanied by a female staff member, and that only female staff members would be responsible for caring for and tending

to female inmates. Additionally, they stipulate that in facilities that house both male and female inmates, the room designated for female inmates must be entirely distinct and in its own space. When queried about their eating habits, medication, health care, and medical resources, particularly during pregnancy, the treatment of these female inmates is found to be negative. Pregnant women who are incarcerated face numerous issues because many of them refuse to undergo pregnancy tests and may even be able to leave prison without having their pregnancies documented. The fact that female inmates may become pregnant while incarcerated through conjugal visits with their partners, release programs, authorized home releases, or weekend visits is another barrier to gathering such statistics. Despite numerous procedures to assure the denial of this particular abuse of power, women who become pregnant while detained owing to incidents of rape by staff members, employees, volunteers, and male inmates⁵³.

2. GLOBAL AND DOMESTIC CONTEXTS

Despite being one of the most disadvantaged groups, children of inmates are also one of the most neglected. There are several possible causes for this. The psychological effects of a traumatic upbringing cannot be ignored. They may have an impact on the offspring well into adulthood if the mother, who is incarcerated, serves as the primary caregiver and the children are raised within prison walls. It has been suggested that children reared in prison are more likely to face legal action and become repeat criminals. In the case of *R.D. Upadhyay v. State of Andhra Pradesh & Others*,⁴ the Supreme Court acknowledged the rights of children born to women who are incarcerated. It was decided that a child incarcerated with his mother would have access to recreational facilities, food, shelter, healthcare, education, and clothing. It is acknowledged that, in most cases, the mother continues to serve as the child's primary caregiver and guardian, and is encouraged to actively participate in the child's life to minimise the negative effects of growing up behind bars. Although it is true that many female inmates become pregnant and decide to actively carry their pregnancies, this decision is made voluntarily. Home visits, conjugal visits, release programs, or other situations that allow individuals to freely engage in consensual sexual behaviour with the partner of their choice are some ways to do this. However, it is also known and shown that female inmates are far more likely to experience rape, brutality, and sexual abuse while detained. This is not to argue that women incarcerated cannot freely consent to any sexual activity; rather, the issue comes up when the interaction involves a person in a position of authority. Custodial rape occurs when "rape is done by a man in whose custody the woman is," according to the National Commission for Women, India ⁵. The idea behind this is that males who hold these positions of leadership are also endowed with enormous power, and it is considered a very serious offence if this power is abused to sexually exploit women. Because of the fiduciary nature of the relationship between the parties, any kind of permission in relationships where one person holds a position of power cannot be referred to as consent. This approach raises the question of whether pregnant women are more likely to receive lenient sentencing from judges and whether this contributes to women's reluctance to report cases of custodial rape.

In addition to obstacles and preconceptions that impact women, pregnant women also have to deal with how society views mothers. Children become additional victims when a mother commits a crime, putting their lives in jeopardy. The public's view of criminal behaviour and their notion of the kind of person who would engage in criminal behaviour severely contradict the function of a "good mother" in this situation. The judge, jail authorities, and other stakeholders engaged in determining her destiny develop prejudices as a result of this one-dimensional style of thinking, which also results in the conscious or unconscious replication of these detrimental prejudices. This prejudice is crucial in determining the fate of female inmates in a patriarchal country like India, which is marked by an unequal sexual division of labor and the role of women as primary caregivers.

3. What is the problem and what are its causes –

As the criminal justice system was created by men for men, it frequently fails to address issues that women experience. This includes challenges encountered at every stage of the criminal justice system, such as the pre-trial phase, where there is a high risk of gender-based sexual violence, the investigation phase, where the majority of police officers are not trained in

gender-sensitive interrogation techniques, the trial phase, where judges frequently render broad decisions without taking into account the offender's pertinent history and background, and the post-trial phase, where the prison system continues to fail them in numerous ways. There are two possible outcomes when judges sentence pregnant women. Based on superficial details like the woman's pregnancy and sexual history, judges may conclude the woman's background. Positive alternatives to this include judges who are more understanding and forgiving of the women, just because they recognise that pregnant women are more likely to have challenges with health care and even childcare while incarcerated.⁶ Experiments have been conducted even in the jury system to determine whether a pregnant woman might elicit sympathy in a trial hypothesis and, as a result, receive less severe punishments. The investigation demonstrated that pregnant women do, in fact, receive less severe punishments than both male and non-pregnant defendants.⁷ The length of time it takes for an officer to be informed of a crime and then show up at the scene, as well as difficulties in creating a site map that may be deemed inadmissible for a variety of reasons, including the unreliability of witnesses present at the scene, are some of the shortcomings that the court has identified and acknowledged. Although these gaps typically appear before the accused is even placed under arrest, what about the gaps that arise after the accused is imprisoned and awaiting trial? The National Human Rights Commission of India⁸, Those held in judicial custody while the allegations against them are being tried before a court of competent jurisdiction are referred to as "under-trial prisoners." Those awaiting trial were housed in the same cells and facilities as those found guilty and put on trial for the longest periods. The Model Prison Manual of 2016⁹ and the Prisons Act 1894,¹⁴ the nation's first and only domestic law on prison regulation, both make it mandatory that undertrial inmates and convicts be housed in separate areas. "Beyond reasonable doubt" is the highest standard of proof in the criminal justice system. To be found guilty of a crime, a person must be proven guilty beyond a reasonable doubt; there must be even the slightest doubt that the accused is guilty.¹⁰ However, the issue with the criminal justice system is that individuals are placed in remand jail after being charged and awaiting trial. Remand custody in accordance with Criminal Procedure Code Section 167 Code is intended to lessen the likelihood that the accused would be harmed while in police custody. However, this means that the accused are subject to jail restrictions to shield them from one type of violence. Concerned about the predicament of undertrial inmates languishing away in various jails around India, where there is no shortage of cruel conditions they must endure, the Supreme Court has occasionally issued directives. The case of *RD Upadhyay v. State of AP* 20 and *Ors* established one of these sets of guidelines.¹¹ These rules particularly apply to infants born to women who are either convicted or incarcerated pending trial. There was a significant gap that needed to be filled since these kids are compelled to grow up in prison and experience the life of a prisoner due to circumstances beyond their control. The Court cited a National Institute of Criminology and Forensic Sciences investigation that revealed several significant issues to properly address the issue. These included, but weren't limited to, the fact that childbearing inmates were reportedly treated equally to non-childbearing inmates in terms of food, amenities, etc. Regardless of whether they had a child to care for or just themselves, all prisoners received the same meals and amenities. Factors that emerged included a crowded atmosphere and a lack of facilities necessary to guarantee a child's healthy upbringing.¹² The Court's directive to all States and UTs to provide an affidavit with information about the number of female undertrial inmates, the length of their incarceration, the number of female convicts, the number of children housed in the jail with their mothers, and the facilities available resulted in a positive outcome. The Court issued instructions that addressed several topics in light of all the reports and information gathered from the States, UTs, and the Union of India. Regarding pregnancy, the rules stipulate that a prison's facilities must be verified to be adequate for providing prenatal and postnatal care for expectant mothers and their unborn children. Additionally, rules were established to guarantee that women who were pregnant or suspected of being pregnant at the time of admission or at any point thereafter were examined by the proper medical authorities and that a report detailing the length of the pregnancy, the anticipated due date, and other information was sent to the Inspector General of Prisons. The necessity of removing children from the prison environment as soon as possible was also given top priority. This is because a child cannot develop and flourish in a prison setting where they

are housed in cramped barracks with female inmates, sexual offenders, and other violent criminals who could permanently harm a developing child's mental health.¹³

4. DOMESTIC CONTEXT AND GLOBAL CONTEXT

Despite being one of the most disadvantaged groups, children of inmates are also one of the most neglected. There are several possible causes for this. The psychological effects of a traumatic upbringing cannot be ignored and may have an impact on the offspring well into adulthood if the mother, who is incarcerated, serves as the primary caregiver and the children are raised within prison walls.¹⁴ It has been suggested that children reared in prison are more likely to face legal action and become repeat criminals. In the case of *R.D. Upadhyay v. State of Andhra Pradesh & Others*¹⁵, the Supreme Court acknowledged the rights of children born to women who are incarcerated. It was decided that a child incarcerated with his mother would have access to recreational facilities, food, shelter, healthcare, education, and clothing. It is acknowledged that the mother typically continues to be the child's primary caregiver and guardian and is encouraged to actively participate in the child's life in order to minimize the negative effects of growing up behind bars. We also want to focus on how these women are.

Although it is true that many female inmates become pregnant and decide to actively carry their pregnancies, this decision is made voluntarily. Home visits, conjugal visits, release programs, or other situations that allow individuals to freely engage in consensual sexual behaviour with the partner of their choice are some ways to do this. However, it is also known and shown that female inmates are far more likely to experience rape, brutality, and sexual abuse while detained. This is not to argue that women incarcerated cannot freely consent to any sexual activity; rather, the issue comes up when the interaction involves a person in a position of authority.¹⁶ Custodial rape occurs when "rape is done by a man in whose custody the woman is," according to the National Commission for Women in India. The idea behind this is that males who hold these positions of leadership are also endowed with enormous power, and it is considered a very serious offence if this power is abused to sexually exploit women. Because of the fiduciary nature of the connection between the parties, any type of consent in relationships when one person is in a position of power cannot be considered consent. It is more difficult for women to acquire suitable and sufficient legal representation because of the notion that they are emotional, erratic, and untrustworthy. In addition to obstacles and preconceptions that impact women, pregnant women also have to deal with how society views mothers. Children become additional victims when a mother commits a crime, putting their lives in jeopardy. The public's view of criminal behaviour and their notion of the kind of person who would engage in criminal behaviour severely contradict the function of a "good mother" in this situation. The judge, jail authorities, and other stakeholders engaged in determining her destiny develop prejudices as a result of this one-dimensional style of thinking, which also results in the conscious or unconscious replication of these detrimental. His narrow-minded perspective causes prejudices to develop in the minds of the court, jail staff, and other parties engaged in determining her destiny, and it results in the conscious or unconscious replication of these detrimental¹⁷. This prejudice is crucial in determining the fate of female inmates in a patriarchal country like India, which is marked by an unequal sexual division of labour and the role of women as primary caregivers.

5. WHAT IS THE PROBLEM?

The criminal justice system was created by men for men; because of this, it frequently fails to address issues that women experience. This includes challenges encountered at every stage of the criminal justice system, such as the pre-trial phase, where there is a high risk of gender-based sexual violence, the investigation phase, where the majority of police officers are not trained in gender-sensitive interrogation techniques, the trial phase, where judges frequently render broad decisions without taking into account the offender's pertinent history and background, and the post-trial phase, where the prison system continues to fail them in numerous ways. There are two possible outcomes when judges sentence pregnant women. Based on superficial details like the woman's pregnancy and sexual history, judges may draw conclusions about the woman's background. Positive alternatives to this include judges who are more understanding and forgiving of the women, just because they recognize that pregnant women are more likely to have challenges with health care and even childcare while

incarcerated. Experiments have been conducted even in the jury system to determine whether a pregnant woman might elicit sympathy in a trial hypothesis and, as a result, receive less severe sentences¹⁸. The investigation demonstrated that pregnant women do, in fact, receive less severe punishments than both male and non-pregnant defendants. The fact that the jail system is slow and that the intervals between various phases of the criminal trial process take somewhat longer than necessary is not a secret. In the past, the Supreme Court of India has even taken suo moto cognizance of the shortcomings and faults brought up during a criminal prosecution. The time it takes for an officer to be informed of a crime and then show up at the scene, as well as difficulties in creating a site map that may be deemed inadmissible for a variety of reasons, including the unreliability of witnesses present at the scene, are some of the shortcomings that the court identified and acknowledged. These gaps typically appear before the accused is even placed under arrest, but what about the gaps that arise while the accused is incarcerated and awaiting trial? The National Human Rights Commission of India¹⁹ states that people detained in judicial custody while the charges against them are being tried before a court of competent jurisdiction are referred to as under-trial detainees. Those awaiting trial were housed in the same cells as those found guilty and put on trial for the longest period of time. "Beyond reasonable doubt" is the highest standard of proof in the criminal justice system. To be found guilty of a crime, a person must be proven guilty beyond a reasonable doubt; there must be even the slightest doubt that the accused is guilty. However, the issue with the criminal justice system is that individuals are placed in remand jail after being charged and awaiting trial. According to Section 167 of the Criminal Procedure Code 15, remand custody is intended to lessen the likelihood that the accused would suffer injury while under police custody. However, this means that the accused are subject to jail restrictions in order to shield them from one type of violence. The issue occurs when this undertrial confinement is extended for an unlimited period of time because a criminal trial is a very drawn-out process. Due to the backlog of cases in the system, it is well known that going to court is a very time-consuming process. As a result, many turn to alternative dispute resolution methods, including mediation, arbitration, and conciliation. However, there is essentially no other option except to use the traditional court system because these methods of conflict resolution are not relevant to criminal situations. Therefore, whether they are found guilty or not, an undertrial prisoner has no other option than to seek justice promptly and definitively. There is no way to guarantee that a woman's case will be resolved before she gives birth if she was pregnant when she was taken into police custody and subsequently imprisoned while awaiting trial, which results in the most frequent situation of having to give birth while incarcerated while awaiting trial²⁰. Pregnant undertrial inmates should receive the same treatment as those who have been found guilty. A lady who was detained in an English prison gave birth by herself in her cell on September 27, 2019. When jail guards visited her cell the following morning, they discovered her infant dead.

The woman whose name was Rianna Cleary lost her 16-year-old child when she was only eighteen. An examination into the circumstances Rianna faced that resulted in this terrible conclusion was sparked by the entire incident, which reeked of carelessness and stupidity. The primary question of why a pregnant lady was in remand detention was never answered, even though investigations were conducted to examine the jail conditions that led to this error. It was revealed during the hearing that a jail guard had witnessed Rianna on her hands and knees giving delivery and had heard her scream in agony, but had done nothing to assist her. Rianna continued to share her opinions, stating the seemingly obvious: prison has never been a safe place to give birth and never will be. ²¹Why was she brought there to suffer when it is widely acknowledged that all pregnancies in prison are high-risk pregnancies? Jemika Johnson, a prisoner at Stafford County's Rappahannock Regional Jail, gave birth on August 3, 2021, while she was alone in solitary confinement. Jemika Johnson was discovered lying in her cell with a pool of blood surrounding her, and it took the prison officials five hours to help her. After being brought to the hospital, she and her child were declared dead. The jail administration claimed that there was no legal authority that could serve as the foundation for such an investigation, despite a subsequent lawsuit for the same; no criminal charges were filed against them. The Board decided that it lacked the jurisdiction to launch an investigation

because the infant child, not the prisoner, died. This resulted in a total absence of responsibility.

Concerned about the predicament of undertrial inmates languishing away in various jails around India, where there is no shortage of cruel conditions they must endure, the Supreme Court has occasionally issued directives. The case of *RD Upadhyay v. State of AP*²⁰ and *Ors*²² established one of these sets of guidelines. These rules particularly apply to infants born to women who are either convicted or incarcerated pending trial. There was a significant gap that needed to be filled since these kids are compelled to grow up in prison and experience the life of a prisoner due to circumstances beyond their control. The Court cited a National Institute of Criminology and Forensic Sciences investigation that revealed several significant issues in order to properly address the issue. These included, but were not limited to, the fact that inmates who were pregnant were reportedly not given any extra care. Regardless of whether they had a child to care for or just themselves, all prisoners received the same meals and amenities. Factors that emerged included a crowded atmosphere and a lack of facilities necessary to guarantee a child's healthy upbringing. The Court's directive to all States and UTs to provide an affidavit with information about the number of female undertrial inmates, the length of their incarceration, the number of female convicts, the number of children housed in the jail with their mothers, and the facilities available resulted in a positive outcome. The Court's directive to all States and UTs to provide an affidavit with information about the number of female undertrial inmates, the length of their incarceration, the number of female convicts, the number of children housed in the jail with their mothers, and the facilities available resulted in a positive outcome. The Union then developed many initiatives to guarantee the welfare of children in general and children of female inmates in particular. The Court issued instructions that addressed several topics in light of all the reports and information gathered from all the states. Regarding pregnancy, the rules stipulate that a prison's facilities must be verified to be adequate for providing prenatal and postnatal care for expectant mothers and their unborn children. Additionally, rules were established to guarantee that women who were pregnant or suspected of being pregnant at the time of admission or at any point thereafter were examined by the proper medical authorities and that a report detailing the length of the pregnancy, the anticipated due date, and other information was sent to the Inspector General of Prisons. The necessity of removing children from the prison environment as soon as possible was also given top priority. This is because a child cannot develop and flourish in a prison setting where they are housed in cramped barracks with female inmates, sexual offenders, and other violent criminals who could permanently harm a developing child's mental health. It is a less than ideal circumstance that these women must suffer jail conditions while pregnant and give birth in situations that cannot even provide the bare minimum of survival. There have been instances where the accused has been granted interim bail in order to give birth in a dignified and safe manner, taking into account these factors as well as the psychological and physical trauma that the mother may experience during childbirth, as well as the long-lasting trauma inflicted on the child. In the *Kajal v. State (NCT of Delhi)* 21 case, the Delhi High Court established the weight that must be given to the type, seriousness, and consequences of the offence. However, in this instance, the accused's pregnancy was taken into serious consideration. Pregnancy is a unique situation that must be thought about and taken into account while applying for bail.

The Court also cited Delhi Prison Rules 2018 Rule 1459, which permits a pregnant offender to be temporarily released or have their sentence suspended, as applicable. This would enable the lady to give birth in a setting with the necessary medical resources to guarantee both the mother's and the child's health and safety. As a result, the accused in this instance was given interim bail for three months starting on the date of release. In the seminal case of *Sunil Batra v. Delhi Administration*²², the Court declared that Fundamental Rights are rights that remain with inmates once they enter prison walls. This position has been repeatedly reaffirmed by courts, further demonstrating that Fundamental Rights are unalienable and cannot be waived. Reproductive rights are important to the accomplishment of human rights since they have been inscribed into fundamental rights over time.

The term "reproductive healthcare" refers to a range of services needed to support individuals' reproductive health. These services include the capacity to have a safe and fulfilling sexual life, the right to choose how, when, and whether to reproduce, as well as access to family planning methods, contraception, STI testing, and immunizations. Consequently, it encompasses a comprehensive spectrum of mental, physical, and social well-being concerning the reproductive system. Reproductive self-determination is the freedom for people to make their own decisions about their sexual autonomy without interference, violence, or force. Reproductive self-determination is the freedom for people to make their own decisions about their sexual autonomy without interference, violence, or force. When it comes to acknowledging elements like maternal health, access to contraception, and reproductive autonomy to be interpreted under Article 21 of the Constitution, Indian courts have taken a more progressive stance. The Court ruled in *Devika Biswas v. Union of India*²³ that the right to health, which includes the right to reproductive health, is a fundamental component of the right to life, which includes the right to live a dignified and meaningful life. Reproductive rights, which include the freedom to make educated decisions about operations like sterilization without any kind of compulsion, were also considered as a component of personal liberty²³. According to *Suchita Srivastava v. Chandigarh Admn*²⁴. (2009), a woman's freedom to make reproductive decisions is covered by Article 21's personal liberty clause, thereby acknowledging the right to reproductive autonomy as a basic right.²⁴

It's critical to comprehend all parties involved and take the jail system's reproductive practices into account. This is also because the majority of those incarcerated are of reproductive age. We can more successfully address the current problems and create policies that are precisely aimed at resolving them when we are aware of the roles and demands of each stakeholder.

Pregnant women's issues cannot only be acknowledged in relation to inadequate healthcare facilities, pregnancies that occur while incarcerated, and other issues. A comprehensive analysis of stakeholders entails examining the issues and functions of each person at each stage of the issue. The women who are being tried while pregnant or who become pregnant while incarcerated or under police custody are the stakeholders in this case. Due to the consequences of being born in an environment that impacts their mental and physical health, the offspring of these women are also significant stakeholders. Another significant player is the jail system and its policies, which are frequently designed to handle the issues and requirements of males rather than women, particularly pregnant women. A significant group of stakeholders in the prison system are medical professionals, such as doctors and nurses. Pregnant women were frequently shackled during childbirth in the United States. The practice of physically restraining a prisoner is known as "shackling," and it is frequently used as a means of ensuring complicity in their behavior and preventing them from becoming violent or having physical outbursts. This meant that nonviolent female offenders received the same treatment as violent male offenders because the prison system's regulations are focused on male inmates.

Mothers are viewed by society as being pure, chaste, maternal, and caring. Pregnant prison women are perceived as unsuitable, unwanted, and undeserving of motherhood when this image collides with the way society views criminals. Muslim and Dalit women are frequently the victims of unacceptable prejudice and legal abuse in India. However, the law is unable to fully safeguard these undertrial inmates because it finds it difficult to acknowledge them as custodial minorities. One of the most recent starting points for conversations about pregnancies while incarcerated was the *State v. Safoora Zargar*²⁶ case, in which Ms. Zargar was detained under the Unlawful Activities (Prevention) Act of 1967. The Solicitor General of India eventually granted her bail, citing humanitarian reasons, despite the fact that she had been denied it three times. Although this appears to be a victory for the body of law regarding pregnancies while detained, the issue is that the matter was never heard in court and was not discussed, the legality of pregnancies while incarcerated was never really addressed.

6. The existing gaps-

Every few years, the National Crime Records Bureau (NCRB) releases its Prison Statistics Report, which compiles information about India's incarcerated population. The purpose of this report is to provide a more thorough understanding of the detained population and to enable all pertinent stakeholders to develop evidence-based policies and decisions. The Prison Statistics Report 2022³² is the most recent of these reports, and it includes details on the kinds

and quantity of jails, inmates—both foreign and Indian—as well as statistics broken down by offenses and sentence length. Inmate diseases and deaths, jail personnel training, rules, and financial data are all included. There are 1,330 prisons in India as of 2022, with an occupancy rate of 131.4%. Rajasthan has the most jails, closely followed by Tamil Nadu. As of December 31, 2022, District Jails had the most inmates, followed by Central Jails and Sub Jails, with 23,772 female detainees. Between 2010 and 2022, the number of female prisoners increased by an astounding 58%. Only 34 of India's 1,330 jails are exclusively for female detainees, making up a pitiful 4.15% of the country's overall prison population. Regarding the statistics on pregnant women incarcerated, neither the number of pregnant women incarcerated nor the percentage of women giving birth in jails is specifically included in the NCRB study²⁵. Numerous states and UTs have taken independent action to address the disproportionate issues pregnant women experience, as well as to address issues like healthcare and sanitation. For example, in Tamil Nādu, pregnant inmates' daily well-being is prioritised through gynaecological examinations and prenatal and postpartum care. Half a litre of milk is provided daily to nursing and nursing moms, and female inmates who are pregnant are given emergency leave for up to 15 days to give birth in a clean, safe atmosphere in suitable medical facilities. In addition to offering a particular food designed to meet the nutritional demands of the offspring of female inmates, Andhra Pradesh has facilities specifically designed to cater to the needs of pregnant inmates and their offspring. By providing pregnant and nursing women with a particular diet in accordance with the Prison Manual and Prison Rules, Karnataka has also embraced a similar food and diet-based strategy. Retribution, prevention, and rehabilitation are the main goals of the prison system. The need for rehabilitation-focused strategies that promote maternal health and welfare is highlighted by an understanding of the psychological requirements of pregnant inmates. The existing punitive system frequently fails to recognise the possibility of good change through supportive and facilitative interventions because it ignores the particular conditions surrounding pregnant women in India. Pregnant women in India face numerous difficulties that are a reflection of the larger structural problems affecting the jail system overall. By tackling these issues in addition to taking a wider view and addressing the complex social processes driving the unequal sexual division of labour.

7. LONG-TERM IMPACTS

Overcrowding, inadequate budget, a lack of medical services, and the physical and psychological repercussions associated with the jail system are all well-known issues in Indian prisons. For a number of reasons, including the inability to deal with lengthy terms, being separated from family and loved ones, and realizing that jail is now their home for the foreseeable future, inmates greatly need psychiatric services. Others must be taught how to survive under these conditions by developing hobbies and sharpening their minds. It is precisely this search for meaning that drives many prisoners to gravitate to religion. One of Cohen and Taylo's first and most critiqued research on incarceration²⁶. The effects of jail on male and female inmates varied as well, particularly when children are involved. Because women are assumed to be the primary caregivers in a patriarchal society like India, the detrimental effects of father incarceration are much less severe than those of mothers. A mother who is imprisoned and cut apart from her child not only worries about losing her connection with her family and way of life, but she also has to deal with the anxiety of being a mother who is not present. Children become direct victims of their mother's actions as a result of women being imprisoned. Mothers who are incarcerated run the danger of being perceived as careless caretakers who are similar to abusive and/or neglecting parents.²⁷ The prison environment and the convicts' personal traits before entering prison are the two key factors that determine how well an offender adapts to prison. By extension of this argument, the same would logically apply to offspring of female inmates growing up behind bars; however, their outlook is confined to the prison walls, and they lack any preexisting features. Therefore, the jail environment itself is the sole factor that has a substantial impact on how they are likely to cope and adapt. Depression, anxiety, violence, hostility, distress, and suicide are all signs of maladaptation to the jail environment. The Stanford Prison Experiment also provided evidence of this phenomenon.²⁸ With all the knowledge that is now accessible regarding the situation that pregnant women encounter and their offspring incarcerated in India, it is evident that

there exists a gap between the creation of policies, their execution, and their guidance. While kids are permitted to spend time with their moms while incarcerated until the age of six, after which the kid is intended to be placed in protective care or given to an appropriate surrogate in a home and must be allowed to see their mother at least once per week. The justification given is that a young child's separation from his mother could have disastrous consequences and long-term effects.²⁹

8. CONCLUSION AND NEW DIRECTION

Recognizing the gaps in the current situation is the first step towards taking a new course. As was already indicated, there are significant gaps in the reporting of data on certain groups of people and a lack of a comprehensive approach to policymaking. There are a number of incredibly comprehensive policies and recommendations that are in line with international humanitarian law standards, as well as reports and recommendations from government ministries that must be promptly and consistently implemented, as well as recommendations made in several cases before the highest court. There should be no room for jail officials to divert such duties, and state-specific prison authorities shouldn't have the last say on the matter.

In conclusion, the prison system—a vital component of the criminal justice system—has numerous flaws when it comes to resolving the issues that pregnant inmates and their offspring face. Many significant difficulties remain unresolved as a result of the convergence of gender-specific concerns and male-centric jail systems.

The first and most important step in the policy-making process is problem identification. Only once a problem has been recognized can it be addressed by putting in place suitable policies, making sure that these rules are adequately executed, and routinely ensuring compliance. By concentrating on gathering pertinent data and examining the issue from a legal and social perspective, this article seeks to identify specific shortcomings in the jail system and offer solutions. These flaws have an impact on community dynamics, family structures, and the offspring of these inmates in addition to individual health effects. The effects of being separated from their moms at such a young age and social stigmatization are two major obstacles that children of incarcerated mothers must overcome. The likelihood of a mother's and child's successful reintegration into society may be impacted.

Prisoners' mental health and well-being have received more attention in recent years, and there is a growing need for mental health specialists to meet this need. Prior to the realization that prisoners are human beings deserving of both physical and mental well-being, this requirement was acknowledged, which was a significant development. One example of a good change is the desire to comprehend the offender's underlying psyche rather than seeing criminals as the product of rational decision-making based on free will.

References

- 1. Mohanty, Muktikanta. "BEHAVIOURAL SYNDROME OF WOMEN PRISONERS IN INDIA." *The Indian Journal of Political Science*, vol. 74, no. 4, 2013, pp. 639–48. JSTOR, <http://www.jstor.org/stable/24701160>. Accessed 11 August. 2024.
- 2. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf
- 3. Bronson, Jennifer, and Carolyn Sufrin. "Pregnant Women in Prison and Jail Don't Count: Data Gaps on Maternal Health and Incarceration." *Public Health Reports* (1974-) 134, no. 1S (2019): 57S–62S. <https://www.jstor.org/stable/26677680>.
- 4. AIR 2006 SC 1946
- 5. National Commission for Women India <http://ncw.nic.in/sites/default/files/Chapter02.pdf>
- 6. Rachel Silverthorn, Kayleen Islam-Zwart "IMPACT OF PREGNANCY STATUS ON JURY PERCEPTIONS OF FEMALE DEFENDANTS" *Journal of Integrated Social Sciences* [https://www.jiss.org/documents/volume_10/JISS%202020%2010\(1\)%2020-33%20Pregnancy%20and%20Jury.pdf](https://www.jiss.org/documents/volume_10/JISS%202020%2010(1)%2020-33%20Pregnancy%20and%20Jury.pdf)
- 7. Vij, RK "Closing the gaps in criminal justice" *The Hindu* <https://www.thehindu.com/opinion/lead/closingthe-gaps-in-criminal-justice/article65303770.ece>

- 8. Law Commission of India, 78th Report, February 1979: "Congestion of Undertrial Prisoners in Jails", p. 15, para 3.9.
- 9. MODEL PRISON MANUAL FOR THE SUPERINTENDENCE AND MANAGEMENT OF PRISONS IN INDIA https://www.mha.gov.in/sites/default/files/2022-12/ModelPrisonMan2003_14112022%5B1%5D.pdf
- 10. The Prisons Act 1894
https://www.indiacode.nic.in/bitstream/123456789/18475/1/prisons_act_1894.pdf
- 11. Section 187 of the BNSS
- 12. Taylor, Diane "The tragedy of Rianna and baby Aisha: why a teenager gave birth all alone in a prison cell" The Guardian <https://www.theguardian.com/society/2023/aug/02/the-tragedy-of-rianna-and-baby-aisha-clearlyteenager-gave-birth-all-alone-in-a-prison-cell>
- 13. Rizzo, Salvador "Woman who gave birth alone in Virginia jail cell sues over baby's death" The Washington Post <https://www.washingtonpost.com/dc-md-va/2024/01/06/woman-rappahannock-jail-birth-lawsuit-virginia/>
- 14. Dr. Sulakshana Banerjee Mukherjee, Reducing Recidivism and Contributing towards Prison Reforms in India, in Criminal Justice Administration in India: Issues & Perspectives (Dr. Somnath Roy ed., Satyam Law International, 2023)
- 15. AIR 2006 SC 1946
- 16. Dr. Sulakshana Banerjee Mukherjee, Reducing Recidivism and Contributing towards Prison Reforms in India, in Criminal Justice Administration in India: Issues & Perspectives (Dr. Somnath Roy ed., Satyam Law International, 2023)
- 17. National Commission for Women India <http://ncw.nic.in/sites/default/files/Chapter02.pdf>
- 18. Rachel Silverthorn, Kayleen Islam-Zwart "IMPACT OF PREGNANCY STATUS ON JURY PERCEPTIONS OF FEMALE DEFENDANTS" Journal of Integrated Social Sciences [https://www.jiss.org/documents/volume_10/JISS%202020%2010\(1\)%2020-33%20Pregnancy%20and%20Jury.pdf](https://www.jiss.org/documents/volume_10/JISS%202020%2010(1)%2020-33%20Pregnancy%20and%20Jury.pdf)
- 19. Law Commission of India, 78th Report, February 1979: "Congestion of Undertrial Prisoners in Jails", p. 15, para 3.9.
- 20. The Prisons Act 1894
https://www.indiacode.nic.in/bitstream/123456789/18475/1/prisons_act_1894.pdf
- 21. Taylor, Diane "The tragedy of Rianna and baby Aisha: why a teenager gave birth all alone in a prison cell" The Guardian <https://www.theguardian.com/society/2023/aug/02/the-tragedy-of-rianna-and-baby-aisha-clearlyteenager-gave-birth-all-alone-in-a-prison-cell>
- 22. AIR 2006 SC 1946
- 23. Devika Biswas v. Union of India, (2016) 10 SCC 726
- 24. Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1
- 25. Ferraro, K. J., & Moe, A. M. (2003). "Mothering, Crime, And Incarceration" Journal of Contemporary Ethnography, 32(1), 9-40. <https://doi.org/10.1177/0891241602238937>
- 26. PSYCHOLOGICAL SURVIVAL: THE EXPERIENCE OF LONG-TERM IMPRISONMENT. Stanley Cohen and Laurie Taylor. Middlesex, Penguin Books. 217 pp. (paper), 45 pence. (1973). Urban Life and Culture, 2(1), 119-120. <https://doi.org/10.1177/089124167300200111>
- 27. Parke, R., Clarke & Stewart, K. 2004, The Effects of Parental Incarceration on Children : Perspectives, Promises and Policies.
<https://www.urban.org/sites/default/files/publication/60691/410627-Effects-of-ParentalIncarceration-on-Young-Children.PDF>
- 28. Stanford Prison Experiment <https://exhibits.stanford.edu/spe>
- 29. 2006 INSC 225 : MANU/SC/2061/2006