REPRODUCTIVE JUSTICE IN CONFINEMENT: A DOCTRINAL STUDY OF WOMEN'S REPRODUCTIVE RIGHTS IN INDIAN PRISONS

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ABSTRACT

This paper examines the legal status, judicial treatment, and administrative practices governing the reproductive rights of women in Indian prisons, with the aim of identifying doctrinal gaps and proposing enforceable reforms. Despite constitutional guarantees of equality, dignity, and personal liberty under Articles 14, 15, and 21 of the Constitution of India, and India's obligations under international instruments such as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, 2010) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the legal and policy framework governing reproductive rights in custodial settings remains fragmented and inadequate. Employing a doctrinal methodology through systematic analysis of constitutional provisions, statutes, judicial decisions, policy documents, and secondary empirical literature, this paper demonstrates that existing mechanisms, including the Medical Termination of Pregnancy Act, 1971 (as amended in 2021) and the Model Prison Manual, 2016, while providing limited protections for maternity and child welfare, fail to guarantee incarcerated women meaningful access to contraception, abortion, and comprehensive pre- and post-natal healthcare. Structural barriers including inter-state inconsistency, procedural delays, the advisory nature of policy instruments, custodial stigma, and the absence of accountability mechanisms collectively obstruct the realization of reproductive justice in prison settings. The paper concludes by proposing a rights-based, enforceable framework that integrates penal administration with medical law, strengthens judicial remedies, and establishes binding protocols for reproductive healthcare, thereby bridging the gap between constitutional aspiration and institutional reality.

I. Introduction

Reproductive justice is more than just about getting good care during pregnancy or getting an abortion. It is a complete system that protects a woman's right to control her own body, make informed choices about her reproductive health, and live with dignity.[1] But this idea is not often put into practice in Indian prisons. Women prisoners, situated at the nexus of gender and incarceration, encounter an added dimension of invisibility regarding their reproductive rights. Their confinement often means they can't get to medical facilities easily, have to deal with red tape when they want an abortion or birth control, and are always denied privacy and consent, which all go against their basic constitutional rights.

Even though Articles 14, 15, and 21 of the Constitution of India clearly protect equality, non-discrimination, and personal freedom,[2] the reproductive rights of women in custody are still not clear in law and policy. Statutory instruments like the Medical Termination of Pregnancy Act, 1971 (as amended in 2021)[3] and administrative frameworks like the Model Prison Manual, 2016[4] set certain healthcare standards, but they are not always followed in prisons and are often left up to the state to decide. India is bound by the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)[5] on the international level. These rules stress the importance of gender-sensitive healthcare and the prohibition of restraints during pregnancy. However, translating these obligations into enforceable domestic mechanisms remains incomplete.

The situation of female inmates has occasionally been addressed by judicial interventions, although the emphasis has been mainly dispersed. While Sheela Barse v. State of Maharashtra[6] guaranteed the safety and provision of legal aid for female inmates, cases like R.D. Upadhyay v. State of A.P.[7] focused primarily on the welfare of children incarcerated. The judiciary has given scant and uneven attention to the more comprehensive aspects of reproductive autonomy,

[1] Loretta J. Ross and Rickie Solinger, *Reproductive Justice: An Introduction* 9-12 (University of California Press, Berkeley, 2017).
[2] The Constitution of India, arts. 14, 15 and 21.
[3] The Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971), s. 3, as amended by the Medical Termination of Pregnancy (Amendment) Act, 2021 (Act 8 of 2021).
[4] Ministry of Home Affairs, "Model Prison Manual for the Superintendence and Management of Prisons in India" ch. IX (2016).
[5] UN General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)*, GA Res 65/229, UN GAOR, UN Doc A/RES/65/229 (Dec. 21, 2010).
[6] *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.
[7] *R.D. Upadhyay v. State of A.P.*, (2006) 3 SCC 422.

such as access to abortion, contraception, and prenatal and postpartum care. The rights protected on paper and the realities inside prison walls diverge as a result of this piecemeal jurisprudence and administrative indifference.

This gap the lack of a cohesive, rights-based, and legally binding framework that protects reproductive justice for women in confinement is the main focus of this paper. The study examines how constitutional clauses, legislative actions, and court rulings have acknowledged and construed reproductive rights in relation to incarceration. It also looks for administrative and doctrinal gaps that prevent these rights from being realized and suggests institutional and legal changes that bring the administration of the penal system into line with the values of bodily autonomy and human dignity.

This study uses a doctrinal approach, referencing international standards, statutory provisions, court rulings, policy reports, and constitutional texts. It aims to trace the development, interpretation, and application of reproductive rights for Indian women who are incarcerated through critical legal analysis. The article starts by describing the legal and constitutional framework that governs women in prison, then it analyzes judicial strategies and systemic issues before suggesting changes to the Indian penal system that would guarantee reproductive justice.

II. Statement of Problem

Even though the Constitution of India guarantees rights under Articles 14, 15, and 21, and the country has commitments to international human rights agreements like the Bangkok Rules, women's reproductive rights in prisons are still pretty inconsistent and often overlooked.[8] Judicial precedents and guidelines like the Model Prison Manual, 2016,[9] along with the Ministry of Women and Child Development's Report on Women in Prisons (2018),[10] recognize that maternal care is important, but they fall short when it comes to broader issues like access to contraception, abortion, and both pre-natal and post-natal care while in custody.

The lack of a consistent legal or administrative framework from state to state has led to random practices, delays, stigma, and denial of critical medical help. Cases like R.D. Upadhyay v. State

[8] The Constitution of India, arts. 14, 15 and 21; supra note 5.
[9] Supra note 4, ch. IX.
[10] Ministry of Women and Child Development, Government of India, "Women in Prisons: India" (2018).

of A.P.[11] and Sheela Barse v. State of Maharashtra[12] have offered some guidance, but overall, the legal precedents often tend to focus more on child welfare or the safety of the inmates, rather than on providing real reproductive justice for women behind bars. Research shows there's still a big gap in implementation, along with issues of custodial abuse and no real accountability.[13]

This fragmented legal situation raises serious questions about equality, dignity, and the bodily autonomy of women prisoners, who are already a doubly marginalized group in the justice system. So, the real issue here is the absence of a solid, enforceable, rights-based framework that ensures reproductive justice for women in confinement in India.

III. Research Questions

1. How does the Indian constitution, along with relevant laws and prison regulations, acknowledge and uphold the reproductive rights of women who are incarcerated?

2. How have Indian courts, especially the Supreme Court and High Courts, interpreted and upheld reproductive autonomy for women in prison, considering both constitutional and international human rights standards?

3. What systemic issues and gaps in the legal and administrative setup prevent women in Indian prisons from achieving reproductive justice, and what changes are needed to effectively enforce these rights?

IV. Research Objectives

1. To examine how well the constitutional guarantees of equality, dignity, and personal freedom, along with laws like the Model Prison Manual of 2016 and the Medical Termination of Pregnancy Act of 1971, protect the reproductive rights of women in confinement.

2. To analyze how Indian courts have interpreted and enforced reproductive rights for incarcerated women, particularly through key rulings, and to see how consistent this legal approach is with international human rights agreements like the Bangkok Rules.

[11] Supra note 7.
[12] Supra note 6.
[13] National Commission for Women, "Report on the Condition of Women Prisoners" 12-14 (2018).

3. To identify and evaluate the legal, administrative, and systemic gaps that prevent reproductive justice from being effectively realized in Indian prisons, even with existing constitutional protections and policies in place.

4. To propose legal and administrative reforms based on solid principles that would create a clear, enforceable, and rights-centered framework ensuring reproductive autonomy for women in custodial environments.

1. Literature Review

The existing body of scholarship on the reproductive rights of incarcerated women in India sits at the convergence of constitutional law, prison administration, gender studies, and public health. While literature in each of these domains has grown considerably, no single scholarly work has comprehensively examined the doctrinal gap between the constitutional recognition of reproductive autonomy and its enforcement within custodial settings in India. Surveying the existing literature reveals three broad clusters: international normative frameworks, domestic policy and judicial scholarship, and empirical or investigative accounts. Each cluster offers valuable insights but leaves critical analytical territory unoccupied, and it is precisely that territory which this paper seeks to address.

The most significant international framework bearing on this subject is the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, adopted by the UN General Assembly in 2010 and commonly referred to as the Bangkok Rules. The Bangkok Rules establish gender-sensitive minimum standards for women in detention, covering antenatal and postnatal care, the prohibition of restraints during pregnancy and childbirth, and the encouragement of non-custodial alternatives for pregnant or nursing women. Scholars and practitioners working in the field of international human rights law have generally welcomed the Bangkok Rules as a normative landmark, particularly because they supplement the Standard Minimum Rules for the Treatment of Prisoners with an explicit gender dimension. However, as commentators have consistently pointed out, the Bangkok Rules operate as soft law. They are not treaty obligations, and their implementation depends entirely on state willingness, resulting in inconsistent adoption and virtually no oversight mechanism. India's policy documents, including the Model Prison Manual (2016) and the Ministry of Women and Child Development's Report on Women in Prisons (2018), reference the Bangkok Rules, but as this paper will demonstrate, those references remain

aspirational rather than legally operative.[14][15][16]

The UNODC Handbook on Women and Imprisonment (2d ed., 2014) complements the Bangkok Rules by providing operational guidance for prison administrators on gender-sensitive practices. While it is a useful practical document, it does not evaluate compliance in specific jurisdictions, does not assess outcomes in Indian prisons, and does not address the legal remedies available to women whose reproductive rights are violated in custody. Its contribution is therefore descriptive and administrative rather than doctrinal, and it does not fill the analytical gap that this paper addresses.[17]

The World Health Organization's Prisons and Health (2014) report reinforces the principle of equivalence of care, which holds that prisoners are entitled to healthcare of a standard equivalent to that available to the general population. The WHO report specifically identifies reproductive health, including prenatal care and access to legal abortion, as components of this standard. However, the WHO's framework is a public health framework, not a legal one. It does not engage with constitutional accountability, judicial enforcement, or the specific statutory architecture governing abortion access in India. The gap between health policy aspiration and legal enforceability is precisely where this paper positions itself.[18]

On the domestic side, the Model Prison Manual (2016), issued by the Ministry of Home Affairs, represents the most detailed administrative framework governing women in Indian prisons. It contains provisions on antenatal and postnatal care, nutrition, and the prohibition of shackling during labour, and it recommends the establishment of crèches and nurseries. Scholarly commentary on the Manual has rightly highlighted its progressive intent. However, the critical weakness of the existing literature is that it largely stops at describing what the Manual provides, without adequately interrogating what the advisory, non-binding nature of the Manual means for enforceability. Because the Manual is a recommendation and not a statute, states are under no legal obligation to adopt it, and several continue to operate under outdated colonial-era prison rules. This gap between policy aspiration and legal obligation is a

[14] Supra note 10.
[15] Supra note 4.
[16] Supra note 5.
[17] UN Office on Drugs and Crime, "Handbook on Women and Imprisonment" 25-29 (2nd ed., UNODC, Vienna, 2014).
[18] World Health Organization, "Prisons and Health" 9-12 (WHO, Copenhagen, 2014).

recurring theme in the literature that has not been resolved.[19]

The Ministry of Women and Child Development's Report on Women in Prisons (2018) and the National Commission for Women's Report on Improving the Condition of Women Inmates (2018) together constitute the most important government-produced documentation of reproductive health deficits in Indian prisons. The MWCD Report, containing 134 recommendations, explicitly calls for improved abortion access under the MTP Act and better reproductive health infrastructure. The NCW Report documents shortfalls in medical staffing, sanitation, and privacy in healthcare across multiple states. Both reports are significant for the factual record they establish, and this paper draws on them extensively. Their limitation, however, is methodological: they are policy documents, not legal analyses, and they contain no mechanism for enforcement, no statutory basis for their recommendations, and no follow-up framework. Literature that cites these reports has largely treated them as evidence of problems rather than as starting points for legal reform, and this paper attempts to go further by translating their findings into a doctrinal argument for enforceable change.[20][21]

The Centre for Reproductive Rights and the Human Rights Law Network's Securing Reproductive Justice in India: A Casebook (2018) is the closest existing work to the subject of this paper. It compiles instances where Indian courts enabled incarcerated women to access abortion, framing these cases within the broader right to dignity and autonomy under Article 21. The Casebook is a valuable resource and this paper engages with several of the legal episodes it documents. Its limitation is that it is case-compilation rather than doctrinal synthesis: it records what courts have done but does not build a normative argument for what courts and the legislature should do, nor does it examine the systemic conditions that make judicial intervention necessary in the first place.[22]

Academic scholarship drawing on comparative and theoretical frameworks also informs this paper. Loretta J. Ross and Rickie Solinger's Reproductive Justice: An Introduction (University of California Press, 2017) provides the conceptual foundation for the reproductive justice framework used in this paper, distinguishing it from the narrower concept of reproductive rights and grounding it in structural conditions of inequality. Angela Davis's work, including

[19] Supra note 4.
[20] Supra note 13.
[21] Supra note 10.
[22] Centre for Reproductive Rights and Human Rights Law Network, *Securing Reproductive Justice in India: A Casebook* (Centre for Reproductive Rights, New York, 2018).

Are Prisons Obsolete? (2003) and Women, Race and Class (1983), situates prison-based reproductive control within a broader analysis of institutional power and gender oppression. Catharine MacKinnon's Toward a Feminist Theory of the State (1989) contributes the feminist legal theoretical lens through which the state's regulation of incarcerated women's bodies is analysed in this paper. While these works are not India-specific, they provide the analytical vocabulary necessary to move beyond a purely doctrinal description of the problem toward a structural critique.[23][24][25][26]

Finally, investigative journalism has provided empirically important, if legally distinct, documentation of conditions inside Indian prisons. A 2024 report in The Guardian documented patterns of sexual abuse and suppression of complaints within Indian prisons, particularly in West Bengal. This paper acknowledges such reportage as illustrative of ground-level conditions that formal legal and policy documents do not capture, while recognising that journalistic sources cannot substitute for peer-reviewed scholarship or official documentation in a doctrinal analysis. It is cited accordingly.[27]

What the existing literature has not done is construct a unified doctrinal argument that connects constitutional guarantees, the MTP Act's statutory framework, the advisory policy landscape, judicial precedent on prisoners' rights and reproductive autonomy, and India's international obligations into a coherent, critical analysis of the enforcement gap. It is that synthesis, and the legal reform framework that follows from it, which this paper provides.

2. Understanding Reproductive Justice in Custodial Settings

The shortcomings of popular discourse on reproductive rights gave rise to the idea of reproductive justice. In the 1990s, Black feminist scholars and activists in the US first articulated it, primarily through the Sister Song Women of Color Reproductive Justice Collective.[28] They maintained that the larger structural and social factors influencing women's capacity to make and exercise reproductive choices were not adequately addressed in the legal and political discourse on reproductive rights, which was primarily focused on the issue of

[23] Supra note 33.
[24] Supra note 80.
[25] Supra note 30.
[26] Supra note 1.
[27] Damini Nath, "Sexual Abuse in Indian Prisons Goes Unreported as Authorities Suppress Complaints", The Guardian, Jan. 14, 2024 (cited as illustrative journalistic reportage).
[28] Supra note 1, at 65-70.

access to abortion. By connecting bodily autonomy with social justice, reproductive justice reframed the issue and demanded not only the right to end a pregnancy but also the right to bear and raise children in environments free from deprivation, violence, and coercion. It rests on three interrelated rights: the right to have a child, the right not to have a child, and the right to parent children in safe and supportive conditions.[29]

Reproductive justice is a more comprehensive normative framework that includes both rights and the material conditions required to realize them, whereas reproductive rights are frequently viewed as legal entitlements protected by constitutional or statutory provisions. It acknowledges that women's autonomy over reproduction is significantly impacted by social hierarchies such as gender, class, caste, and race.[30] Therefore, justice necessitates accessibility, equality, and autonomy in addition to formal legality. This distinction is especially crucial in a place like India, where institutional and social structures still prevent some reproductive rights from being exercised, even though legal frameworks acknowledge them.

One of the most intricate aspects of the concept of reproductive justice is revealed when it is applied to custodial settings. Although they are a small group, women in prison are particularly vulnerable. Although incarceration should not result in a loss of bodily autonomy, in reality, confinement frequently turns into a method of reproductive control. Access to medical services, such as abortion, contraception, and prenatal care, is often delayed or denied in prisons due to stringent surveillance and bureaucratic procedures.[31] These barriers are aggravated by systemic factors such as understaffed facilities, lack of trained medical personnel, and stigma attached to the reproductive needs of prisoners. These difficulties become issues of life, health, and dignity for women who are already pregnant when they enter prison or who become pregnant while incarcerated.

The situation is particularly urgent in India, where the majority of women in prison come from economically disadvantaged and socially marginalized backgrounds.[32] A lot of them are still awaiting trial instead of being convicted, which means their basic rights should be fully respected. However, prison rules and practices often overlook their reproductive needs, focusing more on security and discipline instead. This tendency shows a larger societal issue:

[29] Id. at 70-75.
[30] Angela Davis, *Are Prisons Obsolete?* 64-67 (Seven Stories Press, New York, 2003).
[31] Human Rights Watch, "No Tally of the Anguish: Accountability in Maternal Health Care in India" 18-21 (2009).
[32] National Crime Records Bureau, "Prison Statistics India: 2022" 105-110 (Ministry of Home Affairs, 2023).

treating reproductive healthcare as just a part of motherhood, limiting women's reproductive autonomy to maternity benefits rather than seeing it as an ongoing right tied to choice and dignity.

Looking at this through a feminist legal lens, the control the state exercises over incarcerated women's reproductive rights is a clear example of how patriarchal and institutional power combines to regulate women's bodies. The prison system acts like a smaller version of state authority, putting women at risk of both gender-based and structural oppression. Feminist thinkers emphasize that bodily autonomy shouldn't just be put on hold because someone is behind bars.[33] Instead, the state's duty to care for those in its custody should strengthen, not undermine, an individual's rights to health and dignity. Denying reproductive choices in prisons essentially turns confinement into a sort of reproductive punishment, which goes against constitutional and human rights principles.

The idea of human rights really helps clarify this point. Various international agreements, like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR), make it clear that every person, no matter their situation, deserves equality, dignity, and protection from harsh or degrading treatment.[34] The Bangkok Rules from 2010 go even further, laying out gender-sensitive standards specifically for women in detention, emphasizing the need for access to reproductive healthcare, banning restraints during pregnancy, and advocating for non-custodial options for pregnant or breastfeeding women.[35] These global standards highlight that reproductive justice for those in confinement is a basic human right, not just a privilege.

In India, though, the conversation around reproductive justice for women behind bars is still quite limited. Legal documents like the Model Prison Manual (2016) and the Report on Women in Prisons (2018) from the Ministry of Women and Child Development usually focus on maternal care and childcare in prisons. While these aspects are important, they miss out on the wider issues of reproductive autonomy, such as access to contraception, abortion, and informed consent. The few court decisions on this topic have popped up mostly by chance, rather than

[33] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 162-165 (Harvard University Press, Cambridge, 1989).
[34] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 UNTS 13; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171, art. 10.
[35] Supra note 5.

forming a consistent legal approach to reproductive rights in detention.

To really grasp the idea of reproductive justice in these settings, we need to recognize both the continuity of rights and the context of vulnerability. Being incarcerated doesn't mean a woman loses her right to control her own body, keep her privacy, or maintain her dignity. Instead, the state has a greater responsibility to make sure these rights are protected within its facilities. This understanding lays the groundwork for the current doctrinal study, framing the issue of women's reproductive rights in prisons not just as a healthcare concern, but as a true test of India's constitutional and human rights obligations to uphold equality, dignity, and justice.

3. Constitutional and Statutory Recognition of Reproductive Rights in India

The Indian Constitution lays a solid groundwork for recognizing reproductive autonomy as essential to the right to life and dignity. Even though it doesn't directly mention reproductive rights, the way courts interpret it has broadened its meaning to include bodily autonomy, privacy, and access to healthcare. For women in confinement, these rights take on even greater importance, as they rely on the State for basic medical care, making the State's responsibilities more evident. Thus, the promises of equality, liberty, and dignity outlined in the Constitution need to apply fully to incarcerated individuals, without compromise or delay.

3.1 Constitutional Foundations

At the core of reproductive justice is the principle of equality found in Article 14 of the Constitution, which states that the State can't deny anyone equality before the law or equal protection of the laws. If women prisoners are denied reproductive healthcare or treated differently than free women, that would violate Article 14.[36] This article requires not just formal equality but also substantive equality ensuring that the specific biological and social needs of women, including those in custody, are met through fair and effective measures.

Article 15 backs this up by explicitly forbidding discrimination based on sex and allowing the State, under Article 15(3), to create special provisions for women. This clause is the constitutional foundation for gender-sensitive policies, like prison regulations that address women's reproductive and maternal needs.[37] Unfortunately, the lack of consistent

[36] The Constitution of India, art. 14.
[37] The Constitution of India, art. 15, cl. (3).

implementation at the state level shows that the promise of Article 15 is still largely unfulfilled within prisons.

The right to life and personal liberty under Article 21 has been pivotal in shaping India's reproductive rights law. In Suchita Srivastava v. Chandigarh Administration (2009), the Supreme Court ruled that a woman's right to make reproductive choices is an inseparable part of personal liberty under Article 21.[38] The Court stressed that this right includes both the choice not to have children and the choice to carry a pregnancy to its conclusion. Later, in Devika Biswas v. Union of India (2016), the Court reaffirmed that reproductive rights also cover access to adequate healthcare and protection from coercive or unsafe sterilization.[39] These cases have established reproductive autonomy as a constitutional right rooted in dignity and bodily integrity.

Moreover, the constitutional assurance of reproductive rights is also supported by the Directive Principles of State Policy. Articles 39(e), 42, and 47 collectively urge the State to safeguard women's health, ensure humane working conditions, and improve public health standards.[40] While these principles aren't legally enforceable, they help courts interpret laws and guide state policies regarding healthcare in prisons. The Supreme Court has often referenced the Fundamental Duties and Directive Principles to interpret the right to health as implicit in Article 21, highlighting their relevance in custodial health governance.

3.2 Prisoners' Rights and Article 21

The Supreme Court has made it clear that fundamental rights don't just vanish when someone enters prison. In the cases of Sunil Batra v. Delhi Administration (1978 & 1980), the Court stated that being imprisoned does not strip a person of their constitutional rights. Even when incarcerated, everyone retains their right to life and dignity, and any actions that compromise these rights can be reviewed by the courts.[41] Similarly, in State of Andhra Pradesh v. Challa Ramakrishna Reddy (2000), the Court emphasized that prisoners are entitled to the full protections of Article 21, and it's the State's responsibility to ensure humane living conditions.[42] These rulings together affirm that the reproductive rights of women prisoners are

[38] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, 12.
[39] *Devika Biswas v. Union of India*, (2016) 10 SCC 726.
[40] The Constitution of India, arts. 39(e), 42 and 47.
[41] *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494, 502.
[42] *State of Andhra Pradesh v. Challa Ramakrishna Reddy*, (2000) 5 SCC 712, 719.

not just privileges; they are constitutionally guaranteed rights that stem directly from Article 21.

3.3 Statutory Framework

(a) Medical Termination of Pregnancy (MTP) Act, 1971 (Amended 2021)

The MTP Act is the key law in India that regulates access to abortion. The 2021 amendment extended the legal timeframe for terminating a pregnancy up to 24 weeks in certain circumstances and changed the language from "married woman" to "any woman," acknowledging that reproductive choices shouldn't be limited by marital status.[43] It also introduced protections for confidentiality and gave women the power to make their own reproductive decisions based on medical guidance. However, for women who are incarcerated, these legal rights often run into procedural roadblocks. Prisons typically demand administrative approvals or delay transport to authorized medical facilities, which limits timely access. There have been instances where courts had to step in to direct prison authorities to enable abortions, highlighting the ongoing gap between what the law allows and how it's practiced. In the case of X vs. Principal Secretary, Health and Family Welfare Department, Delhi (2022), the Supreme Court reinforced that a woman's right to choose regarding reproduction is protected under Article 21 and that this applies to unmarried women and survivors of sexual assault as well[44]. This interpretation naturally extends to women in prison, whose bodily autonomy is otherwise completely controlled by the State.

(b) Model Prison Manual, 2016

The Model Prison Manual (2016) is the main policy guide for managing prisons in India. Chapters VIII and IX specifically focus on women prisoners, requiring appropriate facilities for antenatal and postnatal care, sufficient nutrition, and banning shackling during labor.[45] It also recommends setting up crèches and separate accommodations for mothers with babies. Despite these progressive measures, the Manual doesn't address contraception, abortion, or the right to decline pregnancy. Plus, as it's only an advisory document, its application is up to each state's discretion. This leads to significant differences between states, with some fully adopting

[43] Supra note 3.
[44] *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*, (2022) 10 SCC 1.
[45] Supra note 4, chs. VIII-IX.

the 2016 Manual, others implementing it partially, and some still sticking to outdated prison regulations.

(c) The Prisons Act, 1894 and the Model Prisons and Correctional Services Act, 2023

The Prisons Act of 1894, a colonial-era statute, continues to serve as the primary legislation governing prison administration in India. Its foundational orientation toward security, discipline, and labour, with no meaningful engagement with health, gender, or human rights, represents a structural deficiency that directly affects women's reproductive rights in custody. Recognising this inadequacy, the Ministry of Home Affairs, with assistance from the Bureau of Police Research and Development, finalised the Model Prisons and Correctional Services Act, 2023 and circulated it to all States and Union Territories on May 10, 2023, as a guiding document to replace the 1894 Act. The 2023 Model Act is a significant reform initiative in its orientation, signalling a legislative acknowledgment that the colonial framework is no longer adequate. However, its practical impact remains limited for two reasons. First, prisons being a State subject under Entry 4 of List II of the Seventh Schedule to the Constitution, each state must independently choose to adopt or adapt the Model Act, and as of August 2025, no state government has formally confirmed to the Ministry of Home Affairs the complete adoption of this legislation. Second, even as a model draft, the 2023 Act does not contain explicit, enforceable provisions specifically addressing the reproductive rights of women prisoners, meaning that even full adoption would not, by itself, close the doctrinal gap this paper identifies. The situation with the 2016 Model Prison Manual is instructive in this regard: despite 21 states and all eight Union Territories having adopted it, implementation has remained inconsistent and unverifiable in the absence of a statutory monitoring mechanism. The 2023 Act risks the same fate unless it is accompanied by binding legislative obligations at the state level and an independent oversight framework.

(d) Government and Institutional Reports

Recent government publications have recognized these shortfalls. The Ministry of Women and Child Development's Report on Women in Prisons (2018) came up with 134 recommendations aimed at improving health and maternity services, including better access to abortion "as allowed by law."[46] Similarly, the National Commission for Women (NCW) Report on

[46] Supra note 10.

Improving the Condition of Women Inmates (2018) pointed out serious shortcomings in medical staffing, sanitation, and privacy in healthcare for inmates. Together, these reports draw attention to the disconnect between what policies aim to achieve and the realities on the ground, especially regarding reproductive rights. However, they don't establish any binding legal responsibilities, leaving a lot open to how authorities choose to interpret them.

3.4 Harmonising Domestic and International Commitments

India's constitutional and legal frameworks need to be understood in the context of its international commitments under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Bangkok Rules (2010). Article 51(c) of the Constitution instructs the State to honor international law,[47] and the Supreme Court's ruling in Vishaka v. State of Rajasthan (1997) recognized that international treaties can guide the interpretation of fundamental rights.[48] Following this, the reproductive rights of women in prisons can align with global standards that see reproductive healthcare as essential to dignity and protection from cruel treatment.

3.5 Analytical Overview

The constitutional and legal framework clearly acknowledges reproductive autonomy as integral to the rights to life, equality, and health. Still, the lack of a dedicated law specifically addressing the reproductive health of women prisoners creates a legal gap. Existing protections, like the MTP Act and guidelines such as the Model Prison Manual, face challenges from procedural hurdles and administrative issues. Consequently, the execution of these regulations is inconsistent, resulting in uneven application across different states. This situation creates a significant divide between the de jure recognition of reproductive rights and their de facto realization in prison environments. This gap highlights the urgent need for a thorough, rights-based strategy that reconciles the principles outlined in the Constitution with actual practices in institutions.

4. Interpretation and Enforcement by Indian Courts

Judicial interpretation has really been key in shaping the laws around reproductive rights in

[47] The Constitution of India, art. 51(c).
[48] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, 249.

India. Since there isn't a clear legislative framework that deals specifically with reproductive justice in prisons, the judiciary has stepped up to be the main protector of constitutional rights. By interpreting Articles 14, 15, and 21 in a more progressive way, Indian courts have started to recognize that reproductive autonomy is a vital part of personal liberty and dignity. However, when we look at this issue in the context of incarceration, it shows a somewhat uneven and reactive approach one that offers protections on a case-by-case basis instead of providing a consistent rights-based framework.

4.1 Reproductive Autonomy and the Expansion of Article 21

The groundwork for acknowledging reproductive rights in the Constitution was established in Suchita Srivastava v. Chandigarh Administration.[49] In this case, the Supreme Court ruled that a woman's right to make decisions about reproduction whether to have children or not is a key part of her personal liberty as outlined in Article 21. The Court emphasized that bodily integrity and the ability to make decisions are central to personal freedom, and that reproductive rights are connected to the right to privacy and dignity. This case marked the first clear statement recognizing reproductive autonomy as a constitutional right, not just something granted by the State.

Following cases built on this understanding. In Devika Biswas v. Union of India, the Court tackled issues like coercive sterilization and inadequate maternal healthcare in Bihar, ruling that reproductive rights also include the right to good healthcare and freedom from State pressure.[50] Likewise, in K.S. Puttaswamy v. Union of India, the Supreme Court's acknowledgment of privacy as a fundamental right further solidified reproductive autonomy as a personal and protected choice.[51] Most recently, in X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi, the Court broadly interpreted the Medical Termination of Pregnancy Act to include unmarried women, highlighting that reproductive decisions are part of a woman's right to bodily integrity, dignity, and equality.[52] Together, these rulings establish a constitutional link that positions reproductive autonomy at the heart of the right to life.

[49] Supra note 38.
[50] Supra note 39.
[51] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, 267.
[52] Supra note 44.

4.2 Prison Jurisprudence and Women's Rights in Custody

The earlier cases set out the general constitutional principles, but on top of that, courts have also carved out a separate line of rulings focused on the rights of prisoners. In Sunil Batra v. Delhi Administration, the Supreme Court made it clear that inmates keep all their fundamental rights, except for those that must be restricted due to their incarceration. [53]The Court emphasized that the right to life means having dignity, even when behind bars. This principle was echoed again in State of Andhra Pradesh v. Challa Ramakrishna Reddy, where the Court stated that the State has a constitutional duty to safeguard the life and health of prisoners in its custody.[54] These rulings create a vital link between the reproductive rights outlined in Article 21 and the rights of women in prison.

In R.D. Upadhyay v. State of A.P., the Supreme Court tackled the conditions for children living in prison with their mothers.[55] It instructed all States to guarantee adequate nutrition, medical care, and safe childbirth facilities for expectant inmates. The Court also established an age limit for how long children can stay with their mothers in prison and called for the creation of crèches and childcare services. Although this case was a significant progress towards recognizing the needs of both mothers and children in custody, it mainly focused on the child's welfare rather than the independent reproductive rights of the woman.

Another important case, Sheela Barse v. State of Maharashtra, arose from reports of mistreatment of women in custody.[56] The Supreme Court mandated that women should be housed only in female lock-ups, under the watch of female staff, and be presented to a magistrate promptly. It also stressed the importance of access to legal aid and medical services for women prisoners. While it didn't directly address reproductive rights, Sheela Barse laid the groundwork for asserting that women in custody deserve safety, dignity, and humane treatment as per Article 21.

The High Courts have also played a role in shaping this area with more focused actions. In Laxmi Mandal v. Deen Dayal Hospital, the Delhi High Court ruled that denying maternal healthcare to a low-income woman violated her rights to life and dignity.[57] Even though this

[53] Supra note 41.
[54] Supra note 42.
[55] Supra note 7.
[56] Supra note 6.
[57] *Laxmi Mandal v. Deen Dayal Hospital*, W.P. (C) 8853/2008 (Delhi High Court, 2010).

case didn't involve custody, its arguments apply directly to what the State owes to pregnant prisoners. In *High Court on Its Own Motion v. State of Maharashtra*, the Bombay High Court took suo motu cognizance of conditions affecting women in custody, recognising the State's obligation to facilitate access to medical care.[58] Similarly, the Madras and Delhi High Courts have also stepped in to ensure that prisoners receive timely medical attention and that their consent in reproductive health matters is respected.

4.3 Trends and Shortcomings in Judicial Reasoning

Looking over these rulings shows that the Indian judiciary has clearly woven reproductive rights into the fabric of Article 21. However, in cases involving custody, the reasoning has often leaned more towards welfare than autonomy. Courts generally seem to see pregnant inmates mainly as mothers or caregivers, rather than as individuals who should have full reproductive decision-making authority. The lack of consistent rulings on issues like contraception, menstrual health, and reproductive counseling highlights that the understanding of reproductive justice in prisons is still overly focused on maternal protection, rather than on bodily autonomy itself.

Moreover, the judicial response has been mostly reactive. In *Vandana v. State of Maharashtra*, the Court directed that administrative delays by prison authorities cannot be permitted to frustrate a woman's right to make reproductive choices under Article 21 and the MTP Act.[59] This case-by-case intervention, while beneficial for individual cases, has not led to a broader system that ensures uniform enforcement across different states. Compliance with court directives also tends to vary quite a bit since there are no solid statutory monitoring or accountability frameworks in place.

4.4 The Role of Public Interest Litigation and Civil Society

A big part of the progress in prisoners' reproductive rights in India can be credited to public interest litigation (PIL). Activists and journalists, like Sheela Barse, along with organizations such as the Human Rights Law Network (HRLN), have utilized PILs to shed light on the conditions faced by women in custody. These legal actions have pushed the judiciary to tackle

[58] *High Court on Its Own Motion v. State of Maharashtra*, 2016 SCC OnLine Bom 8426.
[59] *Vandana v. State of Maharashtra*, 2020 SCC OnLine Bom 363.

violations that might have otherwise stayed hidden behind prison walls.[60] Essentially, PILs have served as a crucial link between marginalized prisoners and the justice system, bringing important discussions about reproductive health, consent, and dignity into the judicial spotlight.

4.5 Analytical Overview

When looking at it all together, it's clear that the judicial stance recognizes that being imprisoned doesn't strip away fundamental rights. The Supreme Court's broad interpretation of Article 21 lays a strong constitutional foundation for reproductive autonomy, while legal precedents around prisoner rights extend these protections to those in custody. However, the absence of a clear and cohesive framework for reproductive justice within prisons leads to inconsistent enforcement and gaps. Indian courts have effectively acknowledged the existence of these rights but often fall short of ensuring their implementation through enforceable measures. Going forward, the judiciary needs to shift from a protective approach focused on welfare towards a rights-based model that emphasizes women's agency, consent, and equality in custodial settings. Only then can women in confinement truly achieve reproductive autonomy.

5. Policy and International Perspectives

Recognizing reproductive justice as a key human right isn't just about how it's interpreted in our own laws; it's also shaped by international human rights standards. India's dedication to these standards shown through its ratification of important treaties and support for global declarations creates both a moral and legal duty to protect the reproductive health and dignity of women in prisons. But despite some progress with gender-sensitive policies in prison management, India still struggles to fully integrate international norms into enforceable national laws.

5.1 International Human Rights Framework

When it comes to women's reproductive rights while incarcerated, the international framework pulls from various conventions and guidelines that stress the importance of health, dignity, and equality.

[60] See generally S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 145-148 (Oxford University Press, New Delhi, 2002).

(a) The Bangkok Rules (2010)

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, known as the Bangkok Rules, are the most important global effort addressing the unique needs of women in prisons.[61] Adopted by the UN General Assembly in 2010, these rules add to the Standard Minimum Rules for the Treatment of Prisoners and promote a gender-sensitive approach to incarceration. They ensure that pregnant and breastfeeding women receive proper pre- and postnatal care, sufficient nutrition, and humane living conditions. Moreover, the Rules explicitly ban the use of restraints during pregnancy, labor, and right after childbirth. They also encourage non-custodial options whenever feasible, recognizing the far-reaching consequences of imprisoning mothers.

India backed the Bangkok Rules and has mentioned them in policy documents like the Model Prison Manual (2016)[62] and the MWCD Report on Women in Prisons (2018). Still, these references are more suggestions than hard-and-fast rules. Because there isn't a statutory requirement, how well they're followed depends on administrative willingness, leading to significant differences across states. So, even though the Bangkok Rules set a global standard for humane treatment, their actual implementation in India isn't consistent or binding.

(b) CEDAW (1979)

India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993, which means it took on an international obligation to tackle discrimination in all areas, including healthcare. Article 12 of CEDAW requires that States Parties ensure women have equal access to healthcare services, especially for family planning, pregnancy, confinement, and postnatal care. Article 14(2)(b) highlights that special consideration is needed for women in vulnerable situations, including those who are detained.[63] The CEDAW Committee's General Recommendation No. 24 (1999) directly identifies reproductive health as a human right and instructs States to ensure that women in prisons receive appropriate healthcare and are shielded from mistreatment during pregnancy.[64]

[61] Supra note 5.
[62] Supra note 4, ch. IX.
[63] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 UNTS 13, art. 12.
[64] Committee on the Elimination of Discrimination Against Women, "General Recommendation No. 24 on Women and Health", UN Doc A/54/38/Rev.1 (1999).

Although Indian courts have sometimes referenced CEDAW in local rights cases, like in Vishaka v. State of Rajasthan (1997), there's not much evidence of it being consistently applied for women in prison. This selective application reflects the broader gap between India's international commitments and what actually happens at home.

(c) ICCPR and ICESCR

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which India ratified in 1979, reinforce the global acknowledgment of health and dignity for those in detention. Article 10(1) of the ICCPR requires treating everyone deprived of liberty with humanity and respect for their dignity, while Article 12 of the ICESCR ensures the right to the highest standard of physical and mental health. These provisions apply to women prisoners, obligating the State to provide reproductive and maternal healthcare similar to what's available outside prisons. Yet, in India, the approach to prison healthcare is still seen more as an administrative choice than a right that can be enforced.[65]

(d) WHO and UNODC Guidelines

The World Health Organization's "Prisons and Health" (2014) report and the UNODC Handbook on Women and Imprisonment (2014) both underline the principle of equivalence of care, which states that prisoners should receive the same level of medical attention as those in the general population.[66] They also stress the need for reproductive counseling, mental health support, and prevention of sexually transmitted infections. While these guidelines have had some influence on India's policy language, they mostly remain aspirational because of poor medical infrastructure and a lack of gender-sensitive training for prison staff.[67]

5.2 Indian Policy Framework

(a) Model Prison Manual (2016)

The Model Prison Manual, put out by the Ministry of Home Affairs, represents a big step in

[65] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171, art. 10(1); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 UNTS 3, art. 12.
[66] Supra note 18.
[67] Supra note 17.

India's efforts to make prison management more gender-sensitive.[68] It includes important provisions like ensuring proper nutrition for pregnant women, banning restraints during labor, and setting up crèches and nurseries for infants. But since it's just an advisory document, it doesn't have any actual legal force. A lot of states haven't fully adopted its guidelines, and even in places that have, the implementation often falls short because of resource issues and a lack of proper oversight.

(b) MWCD Report on Women in Prisons (2018)

In 2018, the Ministry of Women and Child Development (MWCD) put out a detailed report highlighting the unique challenges that women face in prisons.[69] It called for better access to reproductive health care, counseling services, and abortion options as per the MTP Act. The report also suggested that the Ministries of Home Affairs and Health should work together to make sure services are delivered consistently. Despite its thoughtful recommendations, there hasn't been a national action plan based on this report, which really shows the disconnect between making policies and actually putting them into practice.

(c) NCW Report on Improving the Condition of Women Inmates (2018)

The National Commission for Women (NCW) conducted assessments in various states, finding that prisons often lack proper sanitation, privacy, and qualified medical staff.[70] The report suggested regular medical audits, systems for addressing complaints, and training programs to raise gender awareness among staff. Yet, similar to the MWCD report, these findings are only recommendations with no legal enforcement or budget support.

(d) TISS Women Prisoners Rehabilitation Report (2023)

A more recent study from the Tata Institute of Social Sciences (TISS) looked into how women prisoners are rehabilitated and identified ongoing issues regarding reproductive health care while they're incarcerated.[71] It pointed out that prisons often don't have proper systems for reproductive counseling, postpartum care, or mental health support, showing a serious neglect

[68] Supra note 4, chs. VIII-IX.
[69] Supra note 10.
[70] Supra note 13.
[71] Tata Institute of Social Sciences, "Rehabilitation and Health of Women Prisoners in India" 15-22 (TISS, Mumbai, 2023).

of these essential needs.

(e) Data and Accountability

While the National Crime Records Bureau's Prison Statistics India provides some data on women in prisons including numbers of pregnant women and children living there it doesn't cover outcomes related to reproductive healthcare or service delivery. Because of this lack of detailed data, monitoring and effective policymaking become difficult, and the health needs of women prisoners often get overlooked in official discussions.

5.3 Analytical Overview

India's commitment to global human rights standards shows a strong promise toward gender equality and reproductive justice. However, turning these commitments into enforceable laws at home is still a work in progress.[72] Policy frameworks like the Model Prison Manual and the reports from MWCD and NCW draw from international guidelines, but they only serve as recommendations. Without integrating the Bangkok Rules into law and without an independent way to monitor progress, we continue to see a significant gap in how these policies are implemented.

To turn the aim of reproductive justice into a reality, India needs to close this gap through codification, enforcement, and accountability. This means incorporating international standards into binding national laws, ensuring that the care provided is equivalent, and having oversight mechanisms in place. Doing so could align India's prison system with its constitutional values and global human rights commitments.

6. Challenges and Barriers to Realizing Reproductive Justice in Indian Prisons

Even though India's constitution and its international commitments promote gender equality and health rights, women in prisons still face significant challenges when it comes to reproductive justice. There are multiple layers to these obstacles legal, institutional, social, cultural, and psychological that turn constitutional promises into mostly empty gestures. The issues women face in prison regarding reproductive justice aren't just due to a lack of adequate laws; they also stem from weak administrative efforts, poor infrastructure, and deep-rooted

[72] Supra note 48.

gender biases.

6.1 Legal and Structural Barriers

One of the biggest hurdles is the outdated legal system that governs prisons in India. The Prisons Act of 1894 is still the primary law guiding prison operations, but it was designed more for colonial control than for protecting human rights. It doesn't address healthcare, gender-specific needs, or reproductive rights at all.[73] Without a rights-based law in place, women's health and reproductive choices hinge completely on what prison officials decide.

Another legal challenge comes from the federal structure overseeing prisons. According to the Constitution, "prisons and persons detained therein" are managed under the State List, which causes big inconsistencies in how standards are implemented across different states.[74] The Model Prison Manual (2016) offers some progressive recommendations, but since it's only advisory, its impact varies greatly some states adopt it fully, while others only partially or stick to outdated colonial manuals.[75] This patchwork leads to arbitrary and inconsistent access to reproductive healthcare throughout the nation.

On top of that, the lack of uniform accountability mechanisms only makes things worse. There are no punishments for ignoring prison health guidelines, and there's no established oversight to ensure that court orders or government reports are followed.[76] Judicial responses have been inconsistent, with courts tackling violations one at a time without any ongoing monitoring system. Consequently, reproductive justice largely relies on sporadic court interventions instead of comprehensive reforms.

6.2 Institutional and Administrative Barriers

Institutional shortcomings are perhaps the biggest practical barrier to achieving reproductive justice in prisons. Most prisons in India face insufficient medical facilities. Many don't have full-time gynecologists, trained nurses, or well-equipped maternity wards.[77] Where prison hospitals do exist, they're usually short-staffed and lack the capabilities to manage complicated pregnancies or emergencies. Often, women can only access external hospitals after

[73] The Prisons Act, 1894 (Act 9 of 1894).
[74] The Constitution of India, Seventh Schedule, List II, Entry 4.
[75] Supra note 4.
[76] Supra note 10.
[77] Supra note 13.

bureaucratic delays, which puts both the mother and child at greater risk.[78]

The shortage of female staff compounds these problems. With mostly male prison staff, it can be uncomfortable for women to bring up reproductive or menstrual health issues. Basic necessities like sanitary pads, nutritional support, or prenatal check-ups are often inconsistently provided.

Another significant issue is the lack of coordination between prison authorities and local health departments. Health services for inmates aren't systematically linked with public healthcare, which leads to variations in care quality.[79] Plus, the absence of reliable data makes it hard to create policies based on evidence. The National Crime Records Bureau's Prison Statistics India report shows numbers of women and pregnant inmates but misses crucial indicators like access to abortions, maternal mortality, or healthcare usage. Without this kind of information, oversight bodies struggle to monitor compliance or spot systemic issues.

Finally, prisons don't have effective monitoring and grievance systems in place. Internal complaint committees are either inactive or not accessible, and external checks by human rights organizations happen only occasionally. This lack of transparency makes it difficult for inmates to report neglect or abuse, fostering a culture of silence.

6.3 Socio-Cultural and Psychological Barriers

Besides the shortcomings in institutions, social and cultural factors play a major role in the denial of reproductive justice for women in prisons. These inmates often face double marginalization they're not just women in a patriarchal society, but also convicts stigmatized by societal judgment.[80] Issues surrounding reproduction, like abortion and contraception, often get framed in moral terms instead of being seen as matters of personal choice. Prison officials frequently treat requests related to reproductive health as favors rather than rights, which just reinforces existing gender hierarchies inside these facilities.

Cultural taboos around menstruation, having children out of wedlock, and abortion can further silence these women.[81] A lot of inmates hesitate to seek medical care because they feel

[78] Supra note 58.
[79] Supra note 18.
[80] Supra note 86.
[81] Reva Siegel, "Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection" 44 *Stanford Law Review* 261, 270-273 (1992).

embarrassed or fear judgment. This silence can lead to avoidable health complications and emotional strain.

There's also a psychological aspect to confinement that can't be ignored. Being pregnant or a mother in prison can trigger intense emotional trauma, anxiety, and depression, especially when women are separated from their kids or have to give birth in appalling conditions. Unfortunately, mental health support within prisons is seriously lacking. Very few facilities have trained counselors or psychologists on staff, and reproductive health counseling is nearly nonexistent.[82] This neglect of mental and emotional health undermines the core principle of reproductive justice, which is all about the right to make informed and dignified choices.

6.4 Economic and Logistical Barriers

Financial constraints and lack of resources continue to be significant obstacles. Healthcare spending in prisons is minimal, and reproductive and maternal care doesn't get much funding at all.[83] Often, prisons turn to NGOs or makeshift partnerships to deliver basic health services, which means that access is often more about luck than institutional duty.

On top of that, infrastructure issues only make things worse. Many prisons don't have designated maternity wards, clean restrooms, or proper nutrition for pregnant inmates. Sanitation is often subpar, and privacy can be nonexistent. These conditions not only harm physical health but also violate the principles of dignity and humane treatment recognized by Article 21 of the Constitution and international law.[84]

6.5 Policy and Implementation Barriers

The involvement of multiple authorities in running prisons like the Ministry of Home Affairs, Ministry of Women and Child Development, State Prison Departments, and Health Ministries results in fragmented governance.[85] Overlapping roles lead to poor coordination and diluted accountability. As a result, policies often end up being just words on paper because no single authority takes full responsibility for making them a reality.

[82] Tata Institute of Social Sciences, "Mental Health in Prisons in India" 22-27 (TISS, Mumbai, 2022).
[83] Supra note 32.
[84] Supra note 42.
[85] Ministry of Home Affairs and Ministry of Women and Child Development, "Inter-Ministerial Note on Women Prisoners" (2019).

Another big problem is the lack of gender sensitivity training among prison staff. Even well-meaning officials might struggle to enforce reproductive rights or health protocols without a solid understanding.[86] Plus, there's little focus on follow-up or continuity of care. After a woman gives birth or has an abortion, she often doesn't receive any postnatal counseling or medical check-up. Babies born in prison might not get the necessary healthcare, continuing the cycle of neglect for both mothers and children.

6.6 Analytical Overview

Altogether, these barriers turn constitutional and international commitments into empty promises. Legal gaps, administrative indifference, and socio-cultural bias combine to strip incarcerated women of real control over their bodies and reproductive choices. In India, reproductive justice within prisons is still an unfulfilled constitutional promise one that urgently needs reform in law, policy, and the culture within institutions.

To truly move beyond just surface-level compliance, India should embrace a rights-based, gender-sensitive approach to prison reform. This means legislative change, standardized protocols, and independent oversight to ensure that reproductive autonomy becomes a guaranteed right under the rule of law rather than a privilege reliant on the whims of administrative decisions.

7. Recommendations and Way Forward

Reproductive justice in Indian prisons is a vital mix of constitutional rights, human dignity, and gender equality. Even though judicial interpretations and policy changes have begun to broaden the understanding of reproductive rights, translating that into the actual experiences of women in prison is still a long way off. To achieve reproductive justice behind bars, we need not just legal and administrative changes, but also a big shift in how the State views the rights of women in custody seeing them not just as beneficiaries of welfare, but as active holders of constitutional rights.

7.1 Legislative and Policy Reforms

One of the top priorities for reform is to completely revamp India's old prison laws. The Prisons

[86] Centre for Justice and Mental Health, "Training Manual for Prison Staff on Women's Rights" 9-14 (2021).

Act of 1894, which was primarily aimed at colonial control rather than protecting rights, needs to be replaced by a comprehensive, rights-oriented National Prison Reform Law.[87] This new legislation should clearly establish reproductive health as a protected right for women prisoners, covering safe pregnancy, abortion, contraception, menstrual hygiene, and mental health care. This change would bring domestic law in line with Articles 14, 15, and 21 of the Constitution, ensuring that gender-sensitive care becomes a legal obligation rather than left to administrative choice.[88]

India should also work towards formally including the Bangkok Rules (2010) into its laws. While the current policy documents, like the Model Prison Manual (2016), mention these guidelines, their advisory nature has limited their effectiveness. Making them part of the law would create enforceable requirements for prison authorities to provide antenatal and postnatal care, ban restraints during pregnancy, and guarantee privacy, confidentiality, and informed consent regarding reproductive choices.[89]

To create consistency across states, we should develop a National Code of Prison Health and Reproductive Rights under the joint supervision of the Ministries of Home Affairs and Health. This Code could establish minimum standards for reproductive and maternal healthcare, hygiene, and nutrition in all prisons nationwide. Plus, adopting the Model Prison Manual should be made mandatory, with penalties for failing to comply and regular audits to ensure adherence.[90]

7.2 Institutional and Administrative Reforms

Achieving reproductive justice also requires significant changes within prison institutions. Every central and district prison should set up dedicated women's health units staffed with gynecologists, nurses, and counselors. If permanent medical staff aren't available, the prison system needs to coordinate with local district hospitals for regular check-ups and emergency care. Setting up telemedicine options could also help connect prisons with healthcare providers, especially in remote areas.[91]

[87] Supra note 59.
[88] Supra note 38.
[89] Supra note 5.
[90] Supra note 4.
[91] Supra note 13.

Establishing a strong link between prisons and the public health system is just as crucial. Health departments at the district level should integrate prison facilities into their operational framework for better continuity of care.[92] Moreover, mandatory data collection by the National Crime Records Bureau (NCRB) should go beyond mere headcounts to track antenatal care, abortions, maternal mortality, and the use of reproductive health services. This could lead to evidence-based policymaking and better evaluation of outcomes.

To ensure accountability, each state should set up independent prison health boards. These boards, made up of medical professionals, human rights advocates, and judicial representatives, should carry out regular inspections and publish annual reports. Making these findings public would promote transparency and allow for proper parliamentary and judicial oversight.[93]

7.3 Training and Capacity Building

For gender-sensitive prison reform to really work, it's crucial to shift the mindsets of all those involved in the system. Every prison officer, medical staff member, and warden should participate in compulsory training on gender sensitivity and reproductive rights.[94] These programs need to highlight the foundational legal and ethical aspects of reproductive autonomy, confidentiality, and informed consent.

At the same time, prison healthcare workers should receive specialized medical training on safe abortion practices as per the Medical Termination of Pregnancy Act, maternal care standards, and emergency response strategies. Regular counseling and awareness sessions are also key for inmates, helping them understand their rights, available healthcare services, and family planning options.[95]

7.4 Financial and Infrastructure Strengthening

Making these reforms a reality hinges on sufficient funding and infrastructure. Governments should set aside a dedicated budget line for healthcare within prison systems, making sure there are specific allocations for reproductive and maternal health.[96] Funds need to go toward

[92] Supra note 18.
[93] Supra note 10.
[94] Supra note 72.
[95] *Parmanand Katara v. Union of India*, (1989) 4 SCC 286, 288.
[96] Supra note 32.

establishing maternity wards, sanitation facilities, and crèche spaces in every women's prison.

To bolster state capacity, collaboration with NGOs and accredited healthcare organizations should be formalized through Memoranda of Understanding (MoUs). These partnerships can help provide nutritional support, counseling, prenatal check-ups, and postnatal care. Still, it's important to remember that reliance on NGOs should be supplementary and not replace the State's responsibilities.

7.5 Psychological and Social Support

Reproductive justice isn't just about physical health; it's also about mental and emotional well-being. The trauma associated with pregnancy, childbirth, or abortion while incarcerated can have serious mental health consequences. To tackle this, prisons should appoint trained counselors and psychologists who can assist inmates dealing with issues like pregnancy-related anxiety, postpartum depression, or trauma from coercive reproductive practices.[97]

Moreover, reintegration programs should connect released women to community healthcare services, ensuring they continue receiving treatment and mental health support after leaving prison. Inside the prisons, de-stigmatization campaigns can help normalize discussions around menstruation, sexuality, and reproductive rights, which is really important for breaking down the taboo and shame that often surrounds women's bodies in these environments.

7.6 Judicial and Oversight Mechanisms

The judiciary can play a significant role as both a monitor and a driver for reform. High Courts should set up Prison Reproductive Rights Committees that can ensure compliance with judicial orders and check the conditions of health facilities in prisons. Regular reports on their status would help maintain oversight and prevent any regression once court cases are settled.[98]

Public interest litigation (PIL) has been pivotal in uncovering violations in custody. Courts should encourage these petitions and, when needed, take suo motu cognizance of systemic issues affecting women's health. The National and State Human Rights Commissions should also commit to conducting annual audits focused on the well-being of women prisoners, particularly regarding reproductive and maternal health. These findings must be made public

[97] *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1, 76.
[98] *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161, 183.

to ensure transparency and accountability.[99]

7.7 Analytical Conclusion

Achieving reproductive justice in Indian prisons is not just about efficient administration it's a constitutional and moral obligation. This endeavor embodies the values of equality, liberty, and dignity laid out in Articles 14, 15, and 21 of the Constitution and aligns with India's commitments under CEDAW and the Bangkok Rules.[100]

For far too long, conversations around prison reform have leaned heavily towards security and discipline at the expense of rights and rehabilitation. It's time to transition to a rights-based, gender-sensitive prison system that acknowledges incarcerated women as individuals who are fully entitled to bodily autonomy and dignity. Legislative measures, institutional accountability, and cultural shifts need to come together to turn the aspiration for reproductive justice into a practical reality within India's prisons.

V. Conclusion

This paper has examined the legal status of reproductive rights for women in Indian prisons through a doctrinal analysis of constitutional provisions, statutory frameworks, judicial decisions, and policy instruments, read alongside India's obligations under international human rights law. The central finding is that a significant and constitutionally untenable gap exists between the formal recognition of reproductive autonomy as a fundamental right and its actual realisation within custodial settings. That gap is not incidental. It is the product of specific, identifiable failures in legislation, administration, and institutional culture that this paper has traced across each level of the legal framework.

The constitutional position is, in principle, clear. Articles 14, 15, and 21 of the Constitution collectively guarantee equality, non-discrimination, and the right to life and personal liberty. The Supreme Court has interpreted these provisions broadly and progressively. In *Suchita Srivastava v. Chandigarh Administration* (2009), the Court held that a woman's right to make reproductive choices is an inseparable component of personal liberty under Article 21. In *Devika Biswas v. Union of India* (2016), it extended this to include freedom from coercive

[99] *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235, 242.
[100] Supra note 2.

reproductive practices and the right to adequate healthcare. In *K.S. Puttaswamy v. Union of India* (2017), the right to privacy, which encompasses bodily autonomy and reproductive decision-making, was recognised as a fundamental right. In *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi* (2022), the Court affirmed that the right to make reproductive choices belongs to every woman regardless of marital status. The foundational constitutional architecture for reproductive autonomy is therefore well established. The problem is not the absence of constitutional recognition. The problem is that this recognition has not been translated into enforceable obligations within the specific context of incarceration.

At the statutory level, the Medical Termination of Pregnancy Act, 1971, as amended in 2021, provides a legal framework for abortion access that applies in principle to all women, including those in custody. However, the procedural requirements of the Act, including the need for institutional approvals and transport to authorised facilities, have in practice created barriers that the prison system consistently fails to remove in time. The Model Prison Manual of 2016, though containing progressive provisions on antenatal care, nutrition, and the prohibition of restraints during labour, is an advisory document with no binding legal force. The Prisons Act of 1894, which remains the primary legislation governing prison administration in most states, contains no provisions addressing reproductive health, gender-specific needs, or human rights. The Model Prisons and Correctional Services Act, 2023, circulated by the Ministry of Home Affairs as a replacement framework, has as of August 2025 not been formally adopted by any state government, and even its text does not contain explicit, enforceable provisions on the reproductive rights of women prisoners. The statutory framework is therefore characterised by a combination of inadequate older law, progressive but unenforceable policy, and reform initiatives that remain on paper.

The judicial record, while constitutionally significant, has not produced a coherent or consistently enforced body of law on this subject. Decisions such as *R.D. Upadhyay v. State of A.P.* (2006) and *Sheela Barse v. State of Maharashtra* (1983) advanced the cause of humane treatment in custody but framed the issues primarily through the lens of child welfare and custodial safety rather than reproductive autonomy. High Court interventions ordering prison authorities to facilitate access to abortion have been valuable for the individual women concerned but have not generated systemic change. The judicial approach has been reactive, case-specific, and unaccompanied by monitoring mechanisms. The result is a jurisprudence

that acknowledges the existence of reproductive rights in custody without ensuring their enforcement as a matter of institutional routine.

Against this background, the gap between what the law promises and what incarcerated women experience is not merely an administrative shortcoming. It is a constitutional failure. When the State deprives a person of liberty and assumes complete control over her physical environment, her dependence on the State for access to healthcare becomes total. In that context, denying or delaying access to reproductive healthcare, whether abortion, contraception, prenatal care, or post-natal support, is not a neutral administrative outcome. It is an act of the State that directly engages its obligations under Articles 14, 15, and 21. The Supreme Court held in *Sunil Batra v. Delhi Administration* (1978) that imprisonment does not extinguish fundamental rights. It follows that the State's duty to protect those rights is correspondingly heightened, not diminished, by the fact of custody.

What is required, and what this paper has argued for, is a rights-based, enforceable framework that closes this gap at each level simultaneously. Legislatively, the Prisons Act of 1894 must be replaced by a statute that expressly recognises reproductive health as a protected right for women prisoners and creates binding obligations on prison authorities. The Bangkok Rules must be incorporated into domestic law rather than merely referenced in advisory documents. A National Code of Prison Health and Reproductive Rights, jointly administered by the Ministries of Home Affairs and Health, should establish uniform minimum standards across all states. Institutionally, every women's prison must have access to qualified medical personnel, and prison health systems must be integrated with district public health infrastructure. Judicially, High Courts should establish standing Prison Reproductive Rights Committees to monitor compliance with existing orders and report annually on conditions. Administratively, the National Crime Records Bureau must be mandated to collect data on reproductive health outcomes in prisons, without which evidence-based policy reform is impossible.

Reproductive justice for women in Indian prisons is not a peripheral concern. It is a direct test of whether the constitutional values of equality, dignity, and personal liberty are genuinely universal or whether they yield at the prison gate. The analysis in this paper demonstrates that they currently do yield, and that this is a failure of law rather than an inevitability of incarceration. Correcting it requires the political will to convert constitutional aspiration into

statutory obligation, and to hold the State accountable, through enforceable law and independent oversight, for the reproductive autonomy of the women in its custody.