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ABSTRACT:

“A jail is a place where people who have broken the law are held. The goal of prisons is for the reformation and rehabilitation of prisoners. Despite this, prisons often disguise abuse and depravity behind closed doors, which is dangerous for prisoners. In the case of female prisoners, the issues associated with incarceration become much more pronounced. In a male-dominated prison system, women in detention are especially vulnerable, particularly in ordinary jails where both women and men are held. Corresponding to prison reports from the National Crime Records Bureau, women made up 4.1 percent of all inmates as of the end of 2010¹. There were 18188 jail inmates in India at the end of 2013, with 3396 of them being women, accounting for 18.67 percent of all inmates². In addition, the study cites 34 female inmate deaths in 2010, five of which were suicides³. According to reports, torture and other barbaric practices are being perpetrated on both women and men in many jails across the nation. At the same time, statistics on cruelty versus females in detention in other state facilities, such as hospitals, remand homes, and caretaker homes, are available.”

Keywords: custody, women prisoners, rights of women, Constitutional Rights, women imprisonment, legal analysis.

1. INTRODUCTION:

In a diverse society like India, women's status is not uniform. Because of financial needs, women's traditional roles have changed recently, and some efforts have been made to express perceivability and traditional women's contribution to the common growth and progress of society. In terms of women's status in Indian society, no nation has kept their women in higher regard than India. Women's status in India has undergone several extraordinary changes over the last two centuries. The bourgeoisie political movements of the seventeenth and eighteenth centuries expelled women from their definition of equality, so women

¹ SNAPSHOTS-2010 (I), *Total Number of Jail Inmates as on 31.12.2010*, Prison Statistics India 2010 (National Crime Records Bureau), available at <https://ncrb.gov.in/sites/default/files/PSI-2010.pdf>.

² SNAPSHOTS-2013 (I), *Total Number of Jail Inmates as on 31.12.2013*, Prison Statistics India 2013 (National Crime Records Bureau), available at https://ncrb.gov.in/sites/default/files/PSI-2013_0.pdf.

³ SNAPSHOTS-2010 (III), *Deaths in Jail*, Prison Statistics India 2010 (National Crime Records Bureau), available at <https://ncrb.gov.in/sites/default/files/PSI-2010.pdf>.

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appeared as a different interest group in the nineteenth century. This distinction was made based on gender. Since then, women have fought for recognition of their rights as human beings. Women play a multifaceted role in society, serving as a breadwinner, a caretaker of her family, a wife, mother, daughter, and a society service provider. Even though females contribute equally to the development of the country as their male counterparts, they confront a number of barriers that prevent them from recognizing their full capacity.

In this context, Governments all over the world felt compelled to prioritize the needs of women and their involvement in the development process at every level. The historical background of women in India has been important, in judging a quality about women from history till the advancement of new era. This investigation investigates whether women in India have the identical status and rights as men in various areas such as equality, political empowerment, educational attainment, jobs, family and marriage life, gender and race, culture and religion, and health and well-being, as well as the requirements associated with each. If not, who is capable of or genuinely harmed by such a position: the women themselves, the men in charge of society, the existing governing body, or political strategies? Women's empowerment is divided into five categories: first, their wisdom of self-esteem; second, their right to regulate their own lives, both outside and inside the home; and, finally, their capacity to influence the course of communal change to make a simple economic and social request broadly, globally, and all over. The word "women's empowerment" implies to a woman's right to make all important decisions for herself independently in her life, ensuring her success in all areas.

In India, women's rights are divided into two categories: lawful rights and sacred rights. The existing privileges are those guaranteed by the constitution. Lawful privileges, on the other hand, are those that are outlined in the numerous laws i.e., Act, passed by Parliament and state legislatures. The Constitution not only protects women's rights, but also gives the government the authority to take anti-discrimination measures in their favour. India has also ratified several international conventions and human rights instruments that contribute to

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ensuring women's equality. Indian women are experiencing the most difficult time in terms of their average person and life. Torture of women, both mentally and physically, has become all too normal, and their safety is in jeopardy.

One of the factors contributing to this situation is a lack of understanding of a woman's valid and sacred rights. The most appalling aspect of this is that even women are not fully aware of their rights. The Indian Constitution provides for women's protection as well as allows the State to impose steps of progressive segregation for women to eliminate them from the educational overall financial, and political disadvantages they confront. The following Articles of the Constitution such as Articles 15, 15(3), 14, 39(b), 16, 39(a), 39(c), and 42 are particularly relevant in this regard. Our Indian constitution was written at a time when social conditions of Indian women were pitiable and there was need for a desperate change. In culture, she was subjected to mental and physical torture. She was attempting to establish her social standing and a decent position in society.

The Indian Constitution does not include any special protection for women who are incarcerated.⁴ Women, on the other hand, are granted equality under the Indian Constitution. The Indian Constitution's Founding Fathers thought long and hard on how to defend and foster women's and children's rights. The Preamble, which includes "the values and expectations of the people of India," reflects this well. One of the golden ideals is "equality of rank and opportunity." Article 14 of the Indian Constitution grants women equal legal rights, and Article 15 prohibits gender discrimination. Indian women in prison, on the other hand, continue to face a multitude of problems. In addition, India has ratified a host of international conventions and human rights instruments that support women's equality. In India, women are given legal protection to protect their cultural social, economic and, lives. In India, a campaign to guarantee women's social, economic, and cultural rights (ESCR) as a fundamental human right has started. The movement seeks to place women's rights within a

⁴ Garg, M. and Singla, N., 2012. Rights of women prisoners in India: an evaluation. *International Journal of Advanced Research in Management and Social Sciences*, 1(2), pp.134-52.

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broader human rights context, moving away from women's issues being limited to abuse and reproductive rights. ESCR aims to address the wider challenges that women face, such as housing, poverty, education, water, unemployment, food security, trade, and so on. Women's economic prospects in India are rapidly changing because they are treated equally to men in every sector.

About Women and the Prison System in India, the Indian Jail Committee suggested that architecturally distinct jails or at least detach inclusions for women prisoners be built so that "female prisoners or lady visitors entering the jail should be able to reach the female yard without coming under the observation of male prisoners" as early as 1919-1920 in India⁵. Unfortunately, there has been extraordinarily little improvement in this area. Women inmates are forced to walk through male prisons, whether they are in central prisons, district prisons, or sub-jails, and are often humiliated.

The Committee emphasised the importance of properly classifying inmates and distinguishing female youth from older women, as well as convicted criminals and procurers and prostitutes from women who have previously lived a decent life. Regrettably, State Governments have paid no attention to these suggestions. In India, there are 922 jails, but only 14 of them are exclusively for women. In several prisons, female inmates are housed in enclosures with male personnel. They are often abused and face a variety of problems. The National Human Rights Commission has also received several allegations of sexual harassment. According to the All-India Committee on Jail Reforms 1980-1983, "it is the limited number of women in jails" that is to blame for their needs being ignored. The status of these women, who are strewn about in small groups in prisons, is extremely precarious. Most women detained in Indian prisons are from low-income and impoverished backgrounds. To quote an eminent sociologist, "women in prison are the deprived losers in our diverse and dynamic culture." Women face the additional problem of being responsible for their

⁵ *History of Women Prison in India*, available at <http://egyankosh.ac.in/bitstream/123456789/38918/1/Unit-3.pdf>.

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dependents in many cases, and they also lack the skills required for legal employment after completing their sentence.⁶

According to Article 10 (1) of the United Nations Covenant on Civil and Political Rights, “all persons deprived of their liberty shall be treated with humanity and respect for the intrinsic dignity of the human person,” and “every human being has an inherent right to life,” according to Article 6 of the Covenant (1). The constitution would ensure that this right is protected. No one's life will be taken from him without cause. Except for the fact that being forced to live in a jail necessitates the denial of certain rights, such as the right to travel liberally, a prisoner is entitled to the fundamental freedoms secured by the Constitution, as the Supreme Court of India has stated in various decisions. Prisoners should not be treated like animals and should only be punished according to the law.

1.1 CONSTITUTIONAL SAFEGUARDS FOR WOMEN IN THE INDIAN CONSTITUTION:

The Indian Constitution guaranteed women's equality and encouraged the government to take constructive discrimination steps by removing women's accumulated socioeconomic, political, and educational disadvantages. The Fundamental Rights guarantee uniformity prior to the law and fair protection under the law, barring discrimination against women based on religion, color, sex, or place of birth, caste, and ensuring that all persons have equal access to employment opportunities.

“Article 14 – Equality before the law and equal rights under the law are concepts.

Article 15(1) – The state shall not discriminate against any person based on religion, race, caste, sex, birthplace, or any combination of these factors.

Article 15(3) – Special arrangements for women and children may be made by the state.

Article 16 – In matters of public jobs, all people should have equal opportunities.

⁶ Bawa, P.S., 2000. Towards prison reforms. *India International Centre Quarterly*, 27(2), pp.155-162.

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Article 36 (a) – The State shall focus its policy toward ensuring that women and men have equal access to a sufficient means of subsistence; and, under Article 39 (d), equal pay for equal work for women and men.

Article 39A – To encourage justice on an equal-opportunity basis and to provide free legal assistance through appropriate legislation or schemes, or in some other way to ensure that no citizen's right to justice is violated due to economic or other disabilities.

Article 42 – The state must make provisions for just and humane working practices as well as maternity leave.

Article 46 – The state has a special responsibility to support the educational and economic interests of the poorer parts of the population, as well as to protect them from social inequality and exploitation of all forms.

Article 47 – The state must improve the nourishment and living standards of its citizens.

Article 51 (A) (e) – All citizens have a fundamental responsibility to foster peace and a spirit of mutual brotherhood among all Indians, as well as to reject practices that degrade women's dignity.

Article 243D (3) – At each level of the Panchayat, one-third of the total number of Chairpersons must be reserved for women.

Article 243T (3) – A third of the total number of seats to be filled by direct election in each Municipality (comprising the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) must be reserved for women, with such seats being allocated to various constituencies in a Municipality by rotation.

Article 243T (4) – Reservation of Chairpersonships in Municipalities for Scheduled Castes, Scheduled Tribes, and women in the manner that a State's legislature may provide by statute.”

1.2 INDIA'S IMPORTANT LEGAL PROVISIONS FOR WOMEN:

The state has adopted a series of laws aimed at securing equal protection, countering social inequality and numerous methods of violence and massacres, and providing support services, particularly to employed women, to carry out the Constitutional authority. Even though

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women may be victims of any crime, such as murder, rape, or fraud, "crime against women" refers to crimes committed exclusively against women. They are classified using the meanings below. **The Women Security measures in the IPC (Indian Penal Court) are given as follows.**

- *Sec. 376 IPC: Assault*
- *Sec. 363- 373 IPC: Kidnapping and Abduction for various reasons*
- *Sec. 302/304 -B IPC: Homicide for Dowry, Dowry Deaths, or their efforts*
- *Sec. 498-A IPC: Torture, both mental and physical*
- *Sec. 354 IPC: Harassment*
- *Sec. 509 IPC: Sexual Harassment*
- *The crimes listed in the Special Laws (SLL)*

1.3 INITIATIVES AIMED SPECIFICALLY AT EMPOWERING WOMEN:

- **National Commission for Women Empowerment, 1992:** This legislative body was established by the government with the specific mission of investigating and monitoring all matters relating to women's constitutional and legal rights, as well as reviewing and proposing amendments to existing legislation as required.
- **Reservation for Women Empowerment in Local Self-Government:** Women are guaranteed one-third of total seats in all public offices in municipal bodies, whether in rural or urban areas, under the 73rd Constitutional Amendment Act passed by Parliament in 1992.
- **The National Plan of Action for the Girl Child, 1991-2000:** The aim of the strategy is to ensure the girl child's survival, protection, and growth in order to ensure her bright future.
- **National Policy for the Women Empowerment, 2001:** In the year 2001, the Ministry of Human Resource Development, Department of Child and Women Development drafted a "National Policy for Women Empowerment." This policy's aim is to promote women's growth, progress, and empowerment.

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Women appear to make up a disproportionately minor percentage of the global jail populace. The reality that man inmates have always outnumbered female inmates in the prison system has resulted in a general disregard for women's gender-specific needs, as well as denial of certain resources and chances available to male inmates. In certain countries, the failure of incarceration to resolve the underlying causes that contribute to women's criminal behaviour is mirrored in the rising rate of re-upsetting among females. The changing demographics of the prison population have brought to light the failures of nearly all prison facilities to meet the gender-identifiable demands of female inmates.

Detainee care is governed by several international treaties and conventions. India's constitution grants men and women equal rights. Women's needs are often distinct from those of men. Women include gender-specific facilities for housing, birthing assistance, childcare while in jail, counselling to protect them from rape and sexual assault, and maintaining contact with their dependents outside of prison. International guidelines on the handling of inmates and detainees reflect this. This set of principles acknowledge the need for concrete steps to be taken to safeguard women's rights and their special status.

Women in jail have numerous protections. Their fundamental human rights and freedoms, as guaranteed by the Indian Constitution, cannot be revoked. The Supreme Court ruled in ***Sunil Batra v. Delhi Administration***⁷ that a person's guaranteed rights cannot be stripped away unless it is done in a "correct, just, and fair" manner. The prisoner is cast into the penal system by the judicial method, and his deprivation of liberty is not a blind penitentiary affliction, but a well-lit institutionalization directed toward a social good. The court has a continuing obligation to ensure that the prison administration does not defeat the constitutional object of the deprivation. Different commissions appointed for prison reform, as well as the United Nations, include a variety of protections for women prisoners. The Prison Act of 1894 would include these rights. Because prisons fall under Entry 4 of the State Subjects List of the Constitution of India's Seventh Schedule, they are considered a state

⁷ 1980 SCC (3) 488.

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subject. As a result, state governments are responsible for the supervision and administration of prisons. As a result, when creating Prison Manuals, the respective governments should consider all the given standards.

The following sections address the various forms of civil rights, and legislative protections that woman inmates have:

- a. The Matron is responsible for searching and examining female inmates upon the Medical Officer's general or special order.⁸
- b. Female prisoners have the choice of living apart from their male counterparts. In a jail containing both female and male inmates, Section 27(1) of the Prison Act of 1894 provides that female inmates must be housed in different buildings or sections of the same building so that they cannot see, converse with, or have sexual contact with the male inmates; this privilege is also provided by Rule 8(a) of the Standard Minimum Rules for the Treatment of Prisoners.
- c. Regarding the provision of food, clothing, bedding, and other necessities to such prisoners from private sources, Section 31 of the Prison Act of 1894 states that a civil prisoner or an unconvinced criminal prisoner shall be permitted to maintain himself, and to purchase or receive from private sources at proper hours, food, clothing, bedding, or other necessities, but only subject to examination and such rules as the Inspecting Officer can approve.
- d. According to Section 33 (1) of the Prison Act of 1894, any civil or unconvinced criminal inmate who is unable to provide himself with adequate clothing and bedding may be provided by the Superintendent with whatever bedding and clothing is available.
- e. All detainees are entitled to basic human rights such as sanitary food, accommodation, medical care, and the ability to read and write. They must be handled with dignity while in custody and cannot be isolated in a separate cell unless medically necessary or if they have proved to be a threat to other inmates. A pregnant woman's human right to complete

⁸ Kumari, T.S., 2016. Protection of Rights of Women Prisoners in India. *IUP Law Review*, 6(2).

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medical and personal care at the time of childbirth is unalienable. Women in custody who are pregnant would not be able to use any of the services available to them during their pregnancy. As a result, at the time of delivery, they can be released on bail.⁹

- f.* Rule 53(1) of the Standard Modicum Rules for the Treatment of Prisoners specifies that in a facility that houses both men and women, the area designated for women is supervised by a responsible female officer who has possession of all the keys to that section of the facility. Rule 53 (2) Unless accompanied by a female officer, no male member of the team is permitted to enter the women's section of the organization. Rule 53 (3) Only female officers can visit and supervise female inmates. This does not, however, exclude male staff members, especially teachers and doctors, from performing their professional duties in institutions or sections of institutions dedicated to females.
- g.* Rule 26 (1) states that the medical officer must advise and inspect the director on the following items on a regular basis:
- Food quality, quantity, preparation, and serving.
 - The institution's and the inmates' sanitation and cleanliness.
 - The institution's heating, lighting, sanitation, and ventilation.
 - The appropriateness and cleanliness of the inmates' garments and bedding.
 - In the absence of technical staff in charge of these operations, adherence to the laws governing physical education and athletics.
- h.* The National Commission for the Protection of Children's Rights claims that pregnant, sick, or dependent women in prison should be deemed for soon delivery on individual bonds. According to NCPCR rules, though the essence of the crime must be addressed, the situation of women prisoners who have limited resources and are responsible for young children should be considered.¹⁰

⁹ Dhanuka, M., 2013. The great divide: theory and practice of criminal defence laws in India: Madhurima Dhanuka looks at the gap between criminal law and practice in the sub-continent. *Criminal Justice Matters*, 92(1), pp.22-23.

¹⁰ Borah, K., 2021. A Critical Introspection on the Enjoyment of Legal Rights by Women Undertrial Prisoners in Central Jails of Assam. *Indian Journal of Gender Studies*, p.0971521521997965.

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- i. Woman detainees in India are entitled to free legal assistance under Article 39 A of the Indian Constitution. It states that the state shall guarantee that the judicial system operates in a manner that ensures justice on an equal footing, and that the state shall offer free legal assistance, by appropriate laws or structures or in some other manner, to ensure that no citizen's right to justice is violated due to economic or other disabilities. However, it is debatable if the legal assistance offered is adequate. Any inmate has the right to request legal assistance if necessary. A person's rights cannot be ignored only because he has been sentenced to jail.

According to latest national crime records, only 2% of the country's jails are earmarked for females, accounting for 18 percent of all female pensioners. There are 20 jails reserved for women out of the total number of jails in India¹¹. Prisons have evolved into places of low visibility where inhumane and often cruel conditions have existed over time. In these closed facilities, the risk of causing harm and injustice on prisoners has always existed. Women in our country are not even protected in their own homes, and the situation becomes special if a woman is detained for any offence. The pain of alienation from their children and other family representatives is greater than the sentence.

Kiran Bedi, in her book, "It's Always Possible: One Woman's Transformation of Tihar Prison", wrote that "Women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self-respect they reached the prison with. It must be considered some sort of miracle that these women managed to cling on to their sanity, despite the overwhelming odds they faced." According to the Government of India report on "Women Prisoners and their Dependent Children" in Uttar Pradesh, nearly 200 women were incarcerated in a 60-square-mile district, with only 20 of them being convicted. Women are

¹¹ PRISON STATISTICS INDIA-2016 EXECUTIVE SUMMARY (XII), *Prison Statistics India 2016 (National Crime Records Bureau)*, available at https://ncrb.gov.in/sites/default/files/PSI-2016_0.pdf.

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often confronted with worse challenges than men in jail. Women face difficulties like overpopulation, hygiene, lack of health care services, etc.¹²

A prison report also shows that women are beaten brutally and sexually assaulted in prison. There is an allowance for Indian society's general hostility to women in the states. Prison does not improve a human being's captivity; it scares them forever. Re-socialization is another problem for women who are released. They are deserted by their families and they have nowhere to go. Women have dedicated their life to their nation and still there is nobody to support them. Women degrade their situation every day. Many of the people are uneducated and do not fight for their interests. According to a Tihar Jail article, one of the inmates said, "Life in prison is better than life outside due to stigmas¹³."

The State's supervision of the daily events within these institutions has unfortunately been only a formality and oversight of society is evident in its absence. Recommendations have been numerous both from recommendation bodies and the supreme judicial authorities to change these conditions, but a substantial section of these proposals have not yet seen the light of day.

2. OBJECTIVES:

- Females in jail face several issues.
- Different Protections for Women Prisoners under various laws.
- The status of women inmates should be improved.

3. ISSUES FACED BY WOMEN PRISONERS:

Women in a male-dominated Indian society face injustice on a regular basis, and a variety of offences are committed against them. Women are abused at various levels and they are deprived of their civil rights. The situation of the women prisoners is still deplorable. In the

¹² *Children of Women Prisoners in Jails: A Study in Uttar Pradesh*, available at https://niti.gov.in/planningcommission.gov.in/docs/reports/sereport/ser/stdy_jailwm.pdf.

¹³ *The Experience of Imprisonment*, available at <https://www.nap.edu/read/18613/chapter/8>.

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jail, they are oppressed and punished. Many jails in India appear to be in poor shape, dehumanizing prisoners, and violating their residuary rights.

a) Lack of Women Prison:

The number of women's prisons in India is insufficient. There are 1412 total prisons in India, according to the 2018 Prison Statistics India report, with the classifications shown in Table 1.¹⁴

Table 1. Statistics of Jails:

<u>Jail's Name</u>	<u>Number of Prisons</u>	<u>Jail's Name</u>	<u>Number of Prisons</u>
Sub jails	732	Special jails	42
Women Jails	20	Borstals Schools	20
Central jails	137	Open jails	64
District Jails	394	Other jails	3

According to this table, there are only 18 women's prisons in the country, and only 12 States/UTs have female-only jails. WOMEN'S JAILS are cells that are solely for women. At the district, sub-divisional, and central(range/zone) levels, women's jails can exist. As of December 31, 2018, India had 20 women's prisons with a combined capacity of 5,197 inmates and a 60.1 percent occupancy rate. Most female inmates are held in other kinds of prisons due to the insufficient space of women's jails. Around 83.12 percent of all female inmates in India were detained in prisons other than women's jails as of December 31, 2018. There are five women's prisons in Maharashtra. Kerala and Tamil Nadu each have three female prisons.

b) Basic Necessities Are Not Available:

In India, women prisoners are not even provided with adequate housing or recreational opportunities. Women and their children are deprived of basic services. The female prisoners are still clearly terrified of the jail staff. The prison climate has an impact on the children's

¹⁴ Kasera, P., 2020. Rights of Women Prisoners in India. Available at SSRN 3621467.

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growth, survival, and progress. Children who remain in custody with their mothers have restricted access to pre-school schooling. When imprisoned, contact with the outside world is disrupted, leaving the prisoner unaware of what is going on around him, and with his family. This adds to the distress. Detaining anyone without charge or prosecution is an extreme power that many countries do not allow to be used except for in times of conflict or violence. While the Indian Constitution acknowledges the presence of this force, it is limited by several protections outlined in Articles 21 and 22.

The inmate or detainee retains many of the human liberties and other civil rights that a free citizen has, except for those that are inaccessible due to imprisonment. Furthermore, the women prison's treatment service is inadequate. It's a disaster. The inadequacy of medical treatment in jails has been well documented, with many prisoners dying as a result. According to the National Human Rights Commission's Annual Report, there are far more deaths in judicial detention than in police custody. Given the frequency and severity of concerns about prison care facilities, it would be worthwhile to investigate how many deaths in judicial detention are caused by medical neglect¹⁵.

c) Custodial Torture:

A big challenge is still the sexual harassment of women prisoners. There are horror cases about women in jail being tortured. Custodial rape is also one of the worst tortures inflicted on women by law enforcers by the Asian Center for Human Rights (ACHR), and many custodial rapes of women take place on a regular basis. From 2006 until 28 February 2010, the NHRC has recorded 39 cases of police-judicial rape. Citing the case of Maloti Kalandi, Badal Kalandi's wife was brought to the Tamulpur police station, Baksa district of Assam in security custody along with their twins and rescued from trafficking. Sub-inspector Sahidur Rahman called the victim to his official office instead of providing protection, he raped her¹⁶.

¹⁵ RAJA BAGGA, *Over 60% of Deaths in Police Custody Are Within 24 Hours of Arrest*, available at <https://www.indiaspend.com/over-60-of-deaths-in-police-custody-are-within-24-hours-of-arrest/>.

¹⁶ *Torture in India 2011 is the latest report of The Asian Centre for Human Rights, covering the incidents of torture in India*, available at <http://www.indianet.nl/torture2011.html>.

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A female prisoner was tortured and assaults by the police during the lock-up in a case related to the custodial abuse against prisoners in the police lock-up in Bombay.

d) Inaccessibility to Legal Aid and Services:

Women prisoners in jail do not have enough legal aid. The inaccessibility of legal care is an important issue to address. The NHRC's 2008-2009 Final Annual Report¹⁷ provides that the legal aid scheme must be enhanced in most of the jails visited in India, ensuring that all people who cannot afford their services are provided with trained lawyers. A big issue is also unconsciousness of the law and practice by women prisoners.

Uneducated women are not informed of the judicial structure and their rights as estate by a report named as "Progress of the World's Women", by the Assistant Secretary General of United Nations for Women. Because of their negligence, women cannot even be released under bail in unfair situations by the aid of section 437 of the Cr.P.C. Bail is not a matter of the right of the convicted party for non-Bailable cases. In the case of non-Bailable cases that can or may not be issued at the Court's option, Section 437 of the Cr.P.C provides for bail provisions. However, the clause exempts women and authorizes a court to give a woman bail irrespective of the seriousness of the crime.

4. BACKGROUND OF THE STUDY:

In 2016, more than three lakh women were detained for offences according to the Indian Penal Code (IPC). Many of these women have been prosecuted for violations according to the prohibition law, husband, and riots family, etc. In the past decade or so, the total number of women's crimes has been remarkably consistent. As shown, over the previous fifteen years, the total of women who have been arrested for different crimes has remained amongst 3-3.6 lakh. While this amount is comparatively high, only a percentage of women apprehended are imprisoned in jail after prosecution or trial.

¹⁷ CHAPTER 5 (CIVIL AND POLITICAL RIGHTS), *Provision of Legal Aid (Page No. 74), Annual Report-2008-2009, National Human Rights Commission*, available at https://nhrc.nic.in/sites/default/files/Final%20Annual%20Report-2008-2009%20in%20English_1.pdf.

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5. RELATED RESEARCH:

VirK, Ashish (2011): The emphasis on female crime is negligible compared to global research on male crime. Although some scholarly writings relate solely to this topic, they have almost unusual study and conclusions drawn from old myths on women's character generally, i.e., women are passive, more emotional than men, gentler and more petite than men. However, women's prisons are different from men's facilities, and women react different from men to their prison environments. Therefore, the researchers researched women's prison separately for these critical purposes. The study is focused on realistic observations made on a visit to Ludhiana's lonely women's jail in Punjab. It begins by emphasizing the historical foreign development of women's prisons with their unique characteristics. In the next section, the generalities of gender crime are discussed, different hypotheses and causes of female crime are developed. The third section of this will address comments made during the visit and sociological and physiological consequences for women prisoners.¹⁸

Pal Brij (2012): Prison systems are rarely gender-sensitive, and in conflict circumstances, they are much less sensitive. When women are arrested, international norms, implemented responsively to women's specific needs, are critical. This article summarizes the current international law and the gender issues that must be taken into consideration during its implementation. There have been calls to improve prisoners' conditions in India.¹⁹

Andriani Fili (2013): In the literature, women in prison have constantly been reconfigured. The binary that prevails considers women to be both passive and independent. These concepts are, however, exclusionary and are not mutually informing. Consequently, incarcerated women are used as an instrument to articulate such theoretical ideologies and

¹⁸ VIRK, A., 2011. Imprisonment of Women in India and the National Upgrading of Chastisement to Mirror the United States Penal System. *African Journal of Law and Criminology Vol, 1*(1), pp.100-115.

¹⁹ Pal, B., 2012. Protection of Human Rights of Women Prisoners in India. *Academic Discourse, 1*(1), pp.35-44.

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study expectations. Further the epistemology of theoretically and identity study in women's prisons by using Greece as an example for research would be discussed.²⁰

Candace Kruttschnitt (2015): The disproportionate increase in women's and girls' participation across international boundaries in criminal justice systems attended to reinforce influences about the significance of reflecting etiological causes, assessments, and care for this particular and increasingly growing population. Related to male criminals and prisoners, girls and women are far less likely to dispute with the directive and people whose frequency, seriousness, complexity, and comorbidity were found to have unique psychosocial and mental health needs. Female prisoner's mental wellbeing and psychosocial profile, out of proportion to their masculine counterparts, maybe significant challenges within the framework and organizational needs of correctional environment. Women delinquents also have more often dependent children, who are then at risk for treatment. These features emphasize the importance of appropriate evaluations and measures that do not put women excessively in custody and provide community interventions where women can be efficiently regulated outside an organization. Poorly educated procedures and activities for female offenders would most probably be at specific risk of "over intervention" and unwittingly increasing adverse consequences.

Women prisoners often live more securely than is appropriate, given their sometimes-incoherent risk of severe abuse, recurrence, or escape. Between 1985 and 2005, the number of girls cases in the legal system increased by 108 percent, 86 percent for brutal offences, 249 percent for crimes against women, and 197 percent for drug crimes. While it is a lower total, young girls have been confirmed to receive more stringent youth court penalties for boys same crimes that perpetuate youth justice. The detected trend in young women with past injuries and mental health issues is much more severe, a movement in which these women penetrate the juvenile justice system more deeply and are either part of interference

²⁰ Fili, A., 2013. Women in prison: Victims or resisters? Representations of agency in women's prisons in Greece. *Signs: Journal of Women in Culture and Society*, 39(1), pp.1-26.

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programmes for adolescent male offenders or focused on the possibility of gender-specific treatment.²¹

Elanie Rodermond et al. (2016): This work discusses 44 articles on woman absence to investigate whether male absence hypotheses still refer to female offenders. Sex differences in resistance are taken into consideration where available. In addition to economic freedom, the absence of drugs and independent agencies, children's existence and supporting relationships is critical for women. The influence of children, relationships of support, jobs and the lack of criminal partners are all distinguished by gender. This analysis shows that male resistance theories often apply to women. Besides, the findings highlight the importance of understanding personal and social factors during the departure process. Implications of future study and desistance promotion methods are discussed²².

Ana Máisa Freitas (2016): Few studies have allowed incarcerated mothers to discuss maternity directly. 20 Portuguese mothers convicted of their motherhood experiences were interviewed in this work: Ten raised their children in jail, 10 played their part as prison mothers. In this work, the possible benefits and disadvantages of motherhood were observed, and the actions are taken to improve mothers' conditions were determined. The results show, using themed analyses, that there are benefits for women whose children live with them in custody, but motherhood often raises misery due to freedom restrictions²³.

Nishant Gokhale (2018): Although there is no critical writing or wisdom discussion regarding this penalty, despite over part of India's convicted inhabitants attending life's probation. Following the 2015 decision from a Supreme Court Constitutional Bench in the

²¹ Kruttschnitt, C. and Bijleveld, C. eds., 2015. *Lives of incarcerated women: an international perspective*. Routledge.

²² ELANIE RODERMOND, CANDACE KRUTTSCHNITT, ANNE-MARIE SLOTBOOM, CATRIEN CJH BIJLEVELD, *Female desistance: A review of the literature*, available at <https://research.vu.nl/en/publications/female-desistance-a-systematic-review>.

²³ ANA MÁISA FREITAS, ANA RISCA INÁCIO, LUÍSA SAAVEDRA, *Motherhood in Prison: Reconciling the Irreconcilable*, available at <https://journals.sagepub.com/doi/abs/10.1177/0032885516635129>.

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Union of India v. Sridharan and Ors²⁴ and the 2013 and 2018 Criminal Law Amendments, life imprisonment has been renewed in its harshness, no scope for the abbreviated penalties. This article starts to problematize life imprisonment since usage is likely to be more often than less regular because of such legal advances. This work discusses, besides examining the latest life imprisonment events, life incarceration in a historical setting, the history of Indian prisons and the changes in punishment for life imprisonment. The article states that although there was life imprisonment next to transport, Indian prisons had not been built to hold many lives convicted. A comprehensive statutory structure was not used to facilitate the conversion from transportation to life imprisonment. It required a complicated but not sufficient assortment of judicial declarations, executive orders, and legislative gaps. The sanctions were extremely arbitrary under such arrangements. It is recognized that increasing dependence on life sentences will only worsen current criminal justice issues instead of seeking permanent solutions.²⁵

Pragya Lodha et al. (2018): Review attempts to consider women offenders motivations in the Indian context to conduct crimes. Statistical data indicate rising criminal activity patterns amongst women in the past and present times concerning different criminal behavior forms.

The motivations behind crimes, neurobiological substrates, and the dispositional characteristics responsible for crime cause a disparity between illegal activity between men and women. The analysis seeks to clarify psychopathology's connection with psychosocial advertising and female crime underlying this antisocial behavior.

The related history of justice and law in India is revealed to understand the Indian judiciary system. There is the law protecting women on the one side, while crime practices showing that women's manipulation is an over-advantageous abuse of regulations. A comprehensive

²⁴ V. Sriharan @ Murugan & Ors. vs. Union of India & Ors. 2014 (2) SCALE 505.

²⁵ Rodermond, E., Kruttschnitt, C., Slotboom, A.M. and Bijleveld, C.C., 2016. Female desistance: A review of the literature. *European Journal of Criminology*, 13(1), pp.3-28.

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and rehabilitative model to reduce delinquency among women is needed in the intervention's national and international context.²⁶

Jean Hine (2019): This work recognizes that the interests and concerns about women's plight engaged in crime and the criminal justice system have not been fresh. Still, international attention has grown in recent years. Historically and recently, this article provides a brief overview of this foreign work before focusing on England and Wales's current situation. The recent figures show how women's and jail positions have little improved since the 2007 landmark Carston study and criticize the 2018 Women's Offenders Strategy for England and Wales. It recognizes that while the approach addresses several concepts and suggestions of Corston, there is no mention of the strategy's study itself. The process has a much ambitious effect on the field immediately. While England and Wales can benefit from work in the rest of the United Kingdom and elsewhere, the England and Wales approach has several drawbacks for other jurisdictions.²⁷

Mangala Honawar (2019): Literature has consistently shown that criminals are often unusual in their position as primary caregivers in the family system compared to men. The concerns and needs of women offenders concerning their weaknesses, their prejudices, sexism at different levels and different sorts of social and other factors require a comprehensive and competent approach to preventing recurrence. Over time, specialized intervention for diverse populations of people in conflict of law has been increasingly needed. Categories, such as juvenile, young offenders, etc., there are increasing intervention areas. Crime figures show that women become more involved in crime, and the problem needs to be tackled differently from the current method of criminal justice. In this regard, specialist social workers in prisons, especially in women's context, their vulnerability and crime participation, play an essential role. In fundamental phrases such as first entry of women in jail, during incarceration, convictions, family-related care, assistance for and therapy for mental

²⁶Lodha, P., Venkatesh, S., Kumar, Y. and De Sousa, A., 2018. Incentives of female offenders in criminal behavior: an Indian perspective. *Violence and gender*, 5(4), pp.202-208.

²⁷Gokhale, N., 2018. Life Imprisonment in India: A Short History of a Long Sentence. *NUJS L. Rev.*, 11, p.395.

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wellbeing and health, education support, skill-building support, and selection in addition to prison conditions monitoring, they will act. In the case of woman offenders, social work intervention has the power to reduce recurrence.²⁸

Parul, Luvleen (2020): Prisons are now their world, and women are their new people. As a result of the rising number of women in jails and feminist research, several studies have been done in prison. A further question arose about whether we should regard women in prison as security victims or whether this narrative has shifted. The constant reconstitution of literature on this subject? There have also been various cases where women are victimized in jails, even as foreign and local legal instruments and organisations have been established to protect incarcerated women. India and Indonesia both form part but do not have a systemized prison central to ensure that they are protected as a whole, of various international treaties and rules. The following is written in this paper: The first segment examines the conceptual advancement of women's reproductive rights in the international arena, emphasizing women in prisons. In the second part, a summary of India and Indonesia's problems was subsequently analyzed in-depth by numerous surveys, articles, and news reporting on the sexual abuse of women. In the context of comparative assessments of women's rights under different national and international legal instruments, the approach adopted for this document is primarily doctrinal.²⁹

Mrs. Violet Hazarika (2020): Individuals and societies have become the focus of humanity's march in the broader political sphere. The discussion on State and people's rights have become more expansive. It was mainly due to the widespread appreciation of the State institution's sanctity and a widening recognition of human rights, freedom, and justice. The partnership between the State and the people reflects the essence of the rights, which are mutually contradictory. The interests of inmates are at the forefront when concentrating on

²⁸ Honawar, M., 2019. Social Work Intervention with Women Offenders: A Pathway to Prevent Recidivism. *Asian Social Work Journal*, 4(4), pp.35-46.

²⁹ Luvleen, L. and Parul, P., 2020. Victimization of Women in Prisons: A comparative analysis of India and Indonesia. *Brawijaya Law Journal*, 7(2)

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the rights of late. Prisoners' rights in the international arena are a very recent idea. Since time immemorial, the inmates have been regarded as violators and thereby stripped of all the privileges that they should be enjoyed in their capacity as human beings. At present, however, the international community presents a new vision for prisoners' rights and voices on prisoners' dignity as human beings even inside the jail. In the post-colonial period, the government undertook several measures to improve the penal institution of a disciplinary body and encourage prisoner rights when addressing India. The present work on research in this regard underlines the rights of Indian sub-prisoners in the post-independence period³⁰.

6. SENTENCING OF WOMEN OFFENDERS:

The punishment of women offenders must be very severe since the Indian Penal Code only stipulates the minimum penalty for the maximum sentence. The penalty determination does not exist and relies primarily on the judges' wisdom under various aggravating and alleviatory situations. The Malimath Committee in 2004 and the Madhava Menon Committee in 2008 recommended that the penalty guidelines be introduced.

Ashok Kumar v. The State of Delhi Administration,³¹ The accused had a sexual affair and murdered her husband with a stone in a hotel room. On the point of the punishment, however, the Court noted that hitting the dead man with a handy stone and causing death is not too inhuman and cruel to merit the death sentence. The High Court held it was correctly convicted under section 302 IPC. The death penalty was then commuted to the life sentence. During 2015, the session court sentenced women to two years in jail, outraging a woman's modesty by rendering her parade nude after she tore her clothing. The Court observed - "Indeed, the question of sexual assault from a sexually limited prism will be misunderstood. True, most cases will include women and men, but the statistical reality should not be brought

³⁰ MRS. VIOLET HAZARIKA, *Rights of the Under-trial Prisoners in India: A Critical Analysis of the Post-Colonial Scenario*, JOURNAL OF XI'AN UNIVERSITY OF ARCHITECTURE & TECHNOLOGY, available at <https://www.xajzkjdx.cn/gallery/215-april2020.pdf>.

³¹ *Ashok Kumar v. Delhi Administration & Ors*, 5 May 1982, SCC.

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to bear as a rule. This patriarchal attitude is, after all, not the monopoly of men only behind such sexual offences.”

Ediga Anamma v. State of Andhra Pradesh,³² in this case, the convicted woman becoming a married woman, was unlawful. She lured her into a jungle with her child and killed both when she learned that he was cheating her with an additional woman. She even clothed her clothing to confuse the proof and burned his face and buried the boy in the sand of the river. She has been accused of killing and sentenced. 19 Justice Krishna Iyer has considered many considerations, such as her genre, socio-economic status, age, and life sentences.

Alben v. State of Gujarat,³³ in a murder case against her, a 36-year-old woman prayed for release for the murder of her husband. On their behalf, it was urged that she had a young son outside the prison, and nobody was there to look after him. The case trial probably would take a lot of time, and if the child were not released on bail, it would suffer. There was no one outside the prison from the families of the accused who would be looking at the trial's conduct. On Rs. 10,000/- she received a bail.

7. FINDINGS:

- a)** Socio-economic condition of women prisoners is worse.
- b)** Custodial violence in the prison is one of the foremost difficulties confronted by the women prisoners.
- c)** Women prisoners who are mothers are unable to take care of their children inside the jail premises due to poor facilities and arrangements made for them.
- d)** Sanitation problem is one of the greatest challenges faced by the women prisoners as women face menstruation problem every month and still, they do not get proper sanitation facility due to which they are get prone to various diseases.

³² Ediga Anamma vs State of Andhra Pradesh 11 February, 1974, SCR (3) 329.

³³ Ilaben Wd/O. Dipakkumar Dhanraj ... vs State of Gujarat, (1993) 2 GLR 1148.

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- e)** Lack of nutritious food that is being provided to pregnant women which is causing a severe harm to her health as a mother of her child, thus pregnant women prisoners should be given extra facilities with nutritious food and healthy environment.
- f)** Even the facilities of re-socialization provided to women prisoners to regenerate them is not being served properly.
- g)** There is need for establishment of more separate women prisons in the country.
- h)** Learning should be offered to all segments of women inside the prison, so that they should know their basic rights.
- i)** Redefine the role of Police in safeguarding the rights of women prisoners in jail.
- j)** The strict enforcement of existing laws in the need of the hour. New and impressive laws should be framed with regard to women prisoner's lodge inside the prison.
- k)** Speedy justice should be facilitated to the women prisoners inside the prison.

There are many regulations, rules, and procedures in place to safeguard women from abuse in prison and to ensure that they have access to basic services. However, the execution of these laws has been found to be generally deficient, and women in prison face several issues. Guards, police, physicians, nurses, counsellors, and other female employees are in short supply. The lack of adequate housing is compounded by the fact that most prisons are severely overcrowded. There are insufficient toilets, showers, and other basic sanitation and hygiene facilities. Water and menstrual hygiene products are not available on time, which is a significant problem.

Female medical staff and services dedicated to the physical, reproductive, and mental health requirements of women in custody are in shortage. Nutrition is a problem for pregnant and lactating mothers, as well as children in prison, since it is intricately related to health. Although they are supposed to be on a special diet, this is not always the case. Women have the right to education while in custody, but apart from basic literacy requirements, educational services are generally absent. Vocational training and Skilling are both essential aspects of reform, and every prison is required to provide these programmes.

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Generally, courses teach skills that are unmerchtable, economically unviable, and therefore of little benefit to women after they are released. Each prison should have a legal aid cell to assist with lawsuits, undertrials, appeals, and other legal issues. These are not present in every jail, and there is room for improvement in terms of links with state and district legal services. In jails, inmates are often subjected to physical and sexual abuse at the hands of authorities and other inmates. The arrangements for ensuring the welfare of women in custody and dealing with their grievances must be strictly observed, which is currently not the case. Since prisons are a closed environment, it is important for women to maintain communication with their social networks outside of prison to make a smooth transition after release. Although there are less restrictions on the phone calls, number of letters, and visits that women will receive, additional needs to be done to help them maintain communication and resolve the social stigma that women face in prison.

Many women are incarcerated with their children (under the age of six) when no other suitable arrangements for their treatment can be made. Since spending their formative years in jail can have a significant deleterious effect on children, particular attention must be paid to their physical and mental health, as well as their education and leisure. Pregnant women and mother's welfare must also be taken into consideration. Many women prisoners face extreme social stigma, as well as the loss of family relations and jobs, as well as a lack of economic freedom, when they are released. Steps must be taken to ensure that women receive all basic care while incarcerated, are safe from abuse, and are embraced after release to successfully reintegrate into society.

8. RECOMMENDATIONS:

- a)** Implementing current provisions correctly would go a long way towards reforming the justice system. The National Model Prison Manual 2016 is a forward-thinking guide that outlines the fundamental rights of women in prison which should be accepted by all states and fully implemented.

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- b)** The Mulla Committee also suggested that a National Commission for Prisons be formed to deliver a national perspective on prisons and serve as a central body responsible for them.
- c)** Inspections in prisons on a regular and rigorous basis are also an important way to ensure that laws are being followed. All prisons should practice this, with inspections performed independently and reports exchanged by various government agencies.
- d)** All prisons should have a comprehensive grievance redressal process in place to ensure that prisoners' rights are not breached and that their complaints are considered fairly. Inmates should be able to express their concerns by both internal and external mechanisms.
- e)** When women are arrested, special protocols should be established to guarantee their best interests, as well as the best interests of their children.
- f)** Since searches at the time of entry and during prison life can be a humiliating and violent experience for women inmates, they should be strictly monitored by established SOPs.
- g)** Preparations for pregnancy and childbirth in custody must be adequate, including medical, dietary, and housing-related changes.
- h)** Children of prisoners, whether they live with them or live outside, should never be treated as if they were prisoners.
- i)** Both physical and mental health issues should be addressed on a regular basis. Women in prison should be able to see physicians and psychiatrists if they need them.
- j)** Educational opportunities should be tailored to the skills of the inmates. In addition, occupational training and skilling programmes in prison should be improved because they can boost prisoners' everyday lives and provide them with economic support once they are released.
- k)** Inmates basic living conditions should be improved in terms of adequate toilets, adequate lighting, bedding, culturally appropriate clothing choices, and so on.
- l)** Legal assistance provisions should be applied in conjunction with the State and District Legal Service Authorities. Women's rights and responsibilities should be conveyed to them in a language they can comprehend. In India, there are many people awaiting trial.

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In cases where they are incapable to pay sureties on release, actions should be taken to encourage their early release under Section 436A of the Cr.P.C.

- m)** In the case of female offenders, non-custodial interventions such as community service, accommodation in accommodations, and so on should be prioritized.
- n)** A robust after-care programme will help women avoid recidivism and make a smooth transition back into society. This should comprise assistance with numerous facets of post-incarceration life, such as jobs, housing, child custody, marriage, and avoiding abuse by local cops, among other things.

9. CONCLUSION:

In India, the number of females in jail is gradually rising. The lives of women in jail, many of whom are on trial, are plagued by a variety of problems. Prisons are not doing a good job of reforming their inmates. As a result, it is critical to comprehend the problems facing women in prison, diagnose their rights, and ensure that these rights are upheld. Women face a variety of issues, including a lack of female workers, inadequate accommodation, poor sanitation and hygiene, insufficient facilities to meet physical and mental health needs, inadequate nutrition, limited educational opportunities, and often unusable capacity and vocational training. Many mothers who live with their children do not have access to adequate educational, health, and leisure services. These problems, along with a shortage of legal assistance in jail, minimal interaction with the outdoor world, and an elevated rate of abuse by inmates and officials, aggravate the situation for women.

As a result, their reintegration into society after release is also a significant challenge. When more women join the criminal justice system, it is critical to adapt programmes, processes, and facilities to meet their needs. Prisons are now sealed off from the outside world, making it much more difficult to maintain healthy conditions. It is critical to enable independent and routine inspections to improve adherence to laws. Gender responsive training for prison management and other personnel working with female inmates should be required. This would help them make informed decisions about women in prison. They must also be

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attentive to the needs of women from ethnic groups, disabled women, and foreign nationals to avoid discriminating against them.

To resolve rights violations in prison and offer inmates a way to communicate with the government, a genuine and sensitive grievance redressal process should be established. The problem of female crime in India can be best addressed by improving prison facilities, ensuring better post-release care, and, most significantly, maintaining women out of conventional prison systems as much as probable.

Comprehensive and result-oriented research in this area should be welcomed, as it will have a positive influence on policy programme and design implementation, allowing for more successful responses to the social reintegration needs of women lawbreakers. This research should be seen as a starting point for understanding the situation of women in prison, and the findings should be implemented.

This research is aimed to provide a better understanding of the areas where the justice system could be improved. The reader would almost certainly accept that the overwhelmingly male-centric prison system needs to be reformed to effectively house and reform female inmates. This research can be used as context reading for policymakers and administrators when making decisions on prison reform.

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