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# International Conventions on Reformation and Re-Integration of Women Prisoners and their Influence on the Indian Model Prisons and Correctional Services Act of 2023

Sanhita Mukherjee

*Research Scholar, Sister Nivedita University, Kolkata  
Faculty of Law, Surendranath Law College, University of Calcutta*

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# International Conventions on Reformation and Re-Integration of Women Prisoners and their Influence on the Indian Model Prisons and Correctional Services Act of 2023

## ABSTRACT

*The reformation and reintegration of female prisoners have emerged as crucial topics in contemporary human rights discussions, which primarily reflects a shift away from the concept of punitive imprisonment towards a model of restorative justice. International legal instruments such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, 2015) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, 2010), have established comprehensive standards regarding gender-sensitive treatment, rehabilitation, and social reintegration for women in conflict with the law. These documents recognize the specific needs of female prisoners, including healthcare, mental health support, protection from gender-based violence, the maintenance of family ties, vocational training, and community-based measures as alternatives to incarceration. Against this backdrop, India's Model Prisons and Correctional Services Act, 2023 is considered a significant legislative advancement in aligning prison administration with international human rights standards. Moving away from the punitive framework of the colonial era, this law adopts a rehabilitative approach that emphasizes rehabilitation, corrective treatment, post-release services, and the successful reintegration of prisoners into society. It incorporates various principles reflected in international conventions, such as gender-sensitive prison infrastructure, separate accommodation for female prisoners, healthcare and nutritional support for pregnant prisoners, protection for female prisoners with children, gender-sensitive correctional programs, and opportunities to maintain contact with family. This article examines the influence of international conventions and standards on the creation of the Model Prisons and Correctional Services Act, 2023, specifically in the context of female prisoners. It analyzes the extent to which international norms have been effectively incorporated into domestic prison policies and identifies existing implementation challenges, such as inadequate infrastructure, resource constraints, overcrowding, and the lack of uniform adoption across different states. The study argues that while the 2023 Model Act*

*represents a progressive step towards a rights-based and rehabilitation-oriented correctional system, the effective implementation of international standards requires sustained institutional commitment, gender-sensitive prison administration, and robust rehabilitation mechanisms to facilitate the social re-integration of female prisoners upon their release.*

## KEYWORDS

*International Conventions, Women Prisoners, Re-integration, Indian Model Prison Laws*

## INTRODUCTION

International human rights law imposes significant restrictions on how States may treat prisoners and entails safeguards to protect their rights. It provides guidelines or rules on acceptable forms of punishment. It includes the principle of necessity of imprisonment, the prohibition of certain forms of punishment deemed cruel, unusual, or inhuman, and the principle of proportionality of punishment to the crime. The idea of imprisonment as a punishment is typically framed as per international human rights prerogatives and legal norms.<sup>1</sup>

Key international documents highlight prisoners' rights which equally apply to incarcerated women. They offer recommendations to the government for complying with their international legal obligations towards protection of prisoners' rights. For instance, the Universal Declaration of Human Rights 1948,<sup>2</sup> the Geneva Conventions 1949 and their Additional Protocols 1977,<sup>3</sup> the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Standard Minimum Rules) 1955,<sup>4</sup> the International Covenant on Civil and Political Rights 1966,<sup>5</sup> the International Covenant on Economic, Social and Cultural

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<sup>1</sup> Kellen R. Funk & Sandra G. Mayson, *Bail at the Founding*, 137 HARV. L. REV. 1816 (May 2024)

<sup>2</sup> U.N. General Assembly, Resolution 217 A, *Universal Declaration of Human Rights (UDHR)*, (December 10, 1948).

<sup>3</sup> International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)*, August 12, 1949, 75 UNTS 135 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125, UNTS 609

<sup>4</sup> The Economic and Social Council, Resolutions 663 C (XXIV), *Standard Minimum Rules for the Treatment of Prisoners* adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva on August 30, 1955, (approved on July 31, 1957 and 2076 (LXII) of May 13, 1977).

<sup>5</sup> U.N. General Assembly, Resolution 2200A (XXI), *International Covenant on Civil and Political Rights (ICCPR)*, (December 16, 1966), United Nations, Treaty Series, vol.

Rights 1966,<sup>6</sup> the Convention on the Elimination of All Forms of Discrimination against Women 1979,<sup>7</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984<sup>8</sup>, provide a comprehensive framework and scope for upholding the human rights of prisoners on a global scale.

### **UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948**

The prisoners' rights received global recognition after the adoption of the Universal Declaration of Human Rights (UDHR) on December 10, 1948. The UDHR is widely recognized as a milestone document in the history of human rights. The UDHR contains civil, political, economic, social, and cultural rights. About these rights, the Declaration reaffirms that, "Everyone is entitled to all these rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."<sup>9</sup> It was proclaimed as a common standard of achievements for all peoples and all nations. It comprises of those fundamental human rights which are to be universally protected. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied at global and regional levels.<sup>10</sup>

The UDHR is very clear in its statement of the intrinsic dignity and worth of the human person and makes no exception for those who have broken the law or otherwise violated the social contract. The Declaration showed its concern for prisoners by including provisions that uphold their humanity and dignity. Article 6 incorporates the vital principle that everyone has the right to recognition everywhere as a person before the law, a principle signifies that a prisoner does not cease to be a "person" inside a jail and is, as such, entitled to receive a reasonably decent and civilized treatment in prison. It declares in Article 10, "Everyone has the right to be treated humanely while in custody, in the determination of

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999, 171.

<sup>6</sup> Resolution 2200A (XXI), International Covenant on Economic, Social and Cultural Rights (ICESCR), (December 16, 1966), United Nations, Treaty Series, vol. 993, 3.

<sup>7</sup> U.N. General Assembly, Resolution 38/180, Convention on Elimination of all kinds Of Discrimination Against Women (CEDAW), (December 18, 1979), United Nations, Treaty Series, vol. 1249, 13

<sup>8</sup> Resolution No. 39/146, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), (December 10 1984), United Nations, Treaty Series, vol. 1465, 85.

<sup>9</sup> UDHR 1948, Article 2, 10

<sup>10</sup> United Nations Organization, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last accessed on 27 January 2025)

their rights and obligations, and of any criminal charge against them.”<sup>11</sup>

UDHR does not expressly speak about the exclusive rights of prisoners but highlights their general fundamental human rights. Subsequently, as inspired by UDHR, most states adopted Constitutions and other laws that formally protect individuals' basic human rights. However, at the same time, states were guilty of human rights violations against prisoners because their rights were never a priority for political leaders or the general public.<sup>12</sup> Therefore, legal obligation, continual monitoring, and investigative mechanisms were required to combat human rights violations in general and in prison in particular. In response to this concern, international human rights conventions, treaties, and UN instruments have been developed to prevent human rights violations, at least to some degree incorporating prisoners' rights.<sup>13</sup>

### **GENEVA CONVENTIONS 1949 AND THEIR ADDITIONAL PROTOCOLS, I, II 1977 & III 2005**

Geneva Conventions are a series of international treaties concluded in Geneva between 1864 and 1949 for the purpose of ameliorating the effects of war on soldiers and civilians. Two additional protocols to the 1949 agreement were approved in 1977. In the context of prisoner's rights evolution and protection, the relevance of the Geneva Conventions 1949 and their Additional Protocols 1977 is significant. These international treaties have established globally recognized standards for the treatment of prisoners, particularly during times of armed conflict.<sup>14</sup> They have specific provisions that address the rights and treatment of prisoners of war and other detainees. They have played a crucial role in improving conditions for prisoners by setting clear guidelines and obligations. These include ensuring humane treatment, non-discrimination, and access to medical care.<sup>15</sup> Moreover, they explicitly prohibit acts of violence, torture, cruel treatment, and degrading behaviour towards prisoners.<sup>16</sup>

A major part of international humanitarian law is contained in the four Geneva Conventions of 1949 that have been adopted by all nations in the world. The Conventions have been expanded and supplemented by two

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<sup>11</sup> Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 *YALE L. J.* 2497 (June 2023).

<sup>12</sup> *Ibid.*

<sup>13</sup> Rebecca Goldstein, *The Politics of Decarceration*, 129 *YALE L. J.* 446 (November 2019).

<sup>14</sup> Article 3 is common to the Four Geneva Conventions of 1949 and the Additional Protocols of 1977. The Third Geneva Convention, Articles 12 and 15.

<sup>15</sup> *Ibid.*

<sup>16</sup> Danielle C. Jefferis, *Carceral Deference: Courts and Their Pro-Prison Propensities*, 92 *FORDHAM L. REV.* 983 (December 2023)

further agreements: the Additional Protocols I and II of 1977, relating to the protection of victims of armed conflicts, and the 2005 Additional Protocol III, relating to the adoption of an additional distinctive emblem. These Conventions provide specific rules to safeguard combatants, or members of the armed forces, who are wounded, sick or shipwrecked, prisoners of war, and civilians, as well as medical personnel, military chaplains and civilian support workers of the military.<sup>17</sup>

In 1949, an international conference of diplomats built on the earlier treaties for the protection of war victims, revising and updating them into four new conventions comprising 429 articles of law – known as the Geneva Conventions of August 12, 1949. The Additional Protocols of 1977 and 2005 supplement the Geneva Conventions.<sup>18</sup>

The Geneva Conventions apply in all cases of declared war, or in any other armed conflict between nations. They also apply in cases where a nation is partially or totally occupied by soldiers of another nation, even when there is no armed resistance to that occupation. Nations that ratify the Geneva Conventions must abide by certain humanitarian principles and impose legal sanctions against those who violate them. Ratifying nations must “enact any legislation necessary to provide effective penal sanctions for persons committing or ordering to be committed any of the grave breaches of the Conventions.”<sup>19</sup>

The First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. The First Geneva Convention protects soldiers who are *hors de combat* (out of the battle). The 10 articles of the original 1864<sup>20</sup> version of the Convention has been expanded in the First Geneva Convention of 1949 to 64 articles that protect the wounded and sick soldiers; medical personnel, facilities and equipment; wounded and sick civilian support personnel accompanying the armed forces; military chaplains and civilians who spontaneously take up arms to repel an invasion<sup>21</sup>

The Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 sets out specific rules for the treatment of prisoners of

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<sup>17</sup> International Committee of The Red Cross <  
<https://www.icrc.org/en/document/additional-protocols-geneva-conventions-1949-factsheet>> last accessed 2<sup>nd</sup> February 2025

<sup>18</sup> The Geneva Convention 1949

<sup>19</sup> Ibid. supra note 15

<sup>20</sup> The Geneva Convention of 1864 was the first of a series of treaties that established rules for the treatment of civilians, prisoners, and soldiers during wartime. The convention was signed on August 22, 1864, after a diplomatic conference in Geneva.

<sup>21</sup> The Geneva Convention 1949

war (POW). The Convention's 143 articles require that POW be treated humanely, adequately housed and receive sufficient food, clothing and medical care. Its provisions also establish guidelines on labor, discipline, recreation and criminal trial. The prisoners of war may include,<sup>22</sup> members of the armed forces, volunteer militia, including resistance movements and civilians accompanying the armed forces.<sup>23</sup>

Prisoners of war must not be subjected to torture or medical experimentation and must be protected against acts of violence, insults and public curiosity.<sup>24</sup> POW are required to provide to their captors only their name, rank, date of birth and military service number.<sup>25</sup> Female POW must be treated with the regard due their sex.<sup>26</sup> Captors must not engage in any reprisals or discriminate on the basis of race, nationality, religious beliefs, political opinions or other criteria. POW must be housed in clean, adequate shelter, and receive the food, clothing and medical care necessary to maintain good health. They must not be held in combat areas where they are exposed to fire, nor can they be used to shield areas from military operations. They may be required to do nonmilitary jobs under reasonable working conditions when paid at a fair rate.<sup>27</sup> POW are to be allowed to correspond with their families and receive relief packages.

In 1977, two Protocols supplementary to the Geneva Conventions were adopted by an international diplomatic conference to give greater protection to victims of both international and internal armed conflicts.<sup>28</sup> By 2010, 170 nations have ratified Protocol I and 165 have ratified Protocol II. Any nation that has ratified the Geneva Conventions but not the Protocols is still bound by all provisions of the Conventions.<sup>29</sup> Protocol I (102 Articles) Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts Protocol I expands protection for the civilian population as well as military and civilian medical workers in international armed conflicts.<sup>30</sup> Specific provisions include: Protocol II (28 Articles) Protocol additional to the Geneva Conventions of 12 August

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<sup>22</sup> Supra note 16

<sup>23</sup> The Geneva Convention 1949, Articles 13,14

<sup>24</sup> The Geneva Convention 1949, Article 15

<sup>25</sup> The Geneva Convention 1949, Article 17

<sup>26</sup> The Geneva Convention 1949, Articles 25-27,30

<sup>27</sup> The Geneva Convention 1949, Articles 50-54

<sup>28</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) Geneva, 8 June 1977 & Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) Geneva, 8 June 1977

<sup>29</sup> Supra note 16, 22

<sup>30</sup> Erin Braatz, *Prison Administrative Law*, 74 AM. U. L. REV. 45 (October 2024)

1949, and Relating to the Protection of Victims of Non-International Armed Conflicts Protocol II elaborates on protections for victims caught up in high-intensity internal conflicts such as civil wars. It does not apply to such internal disturbances as riots, demonstrations and isolated acts of violence. Protocol II expands and complements the non-international protections contained in Article 3 common to all four Geneva Conventions of 1949. Protocol II specifically prohibits violence to the life, health and physical or mental well-being of people.<sup>31</sup> In particular, it prohibits acts of murder and cruel treatment, terrorism, hostage-taking, slavery, outrages on personal dignity, collective punishment and pillage. These protections are considered fundamental guarantees for all persons.<sup>32</sup> The 2005 Protocol is not an independent document. It supplements and is governed by the provisions of the four Geneva Conventions of 1949 and the 1977 Additional Protocols. It is a short document of relatively limited coverage with about 17 articles, only seven of which are substantive provisions.<sup>33</sup>

### **THE UNITED NATIONS STANDARD MINIMUM RULES ON THE TREATMENT OF PRISONERS, 1955**

The leading international instrument for prisoners is the UN Standard Minimum Rules on the Treatment of Prisoners (SMRs). The rules were adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, approved by the UN Economic and Social Council in 1957 and later amended in 1977.<sup>34</sup> This UN instrument is widely used by national authorities, civil society organizations, and criminal law practitioners worldwide to guide treating prisoners and managing penal institutions, such as jails, detention centres, and correctional facilities. The purpose of these rules is not to provide a comprehensive blueprint for an ideal penal system.

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<sup>31</sup> Supra note 13

<sup>32</sup> The Geneva Conventions of 12 August 1949 mainly aims for the protection of war victims. These treaties, which are universally accepted, protect the wounded, the sick, the shipwrecked, prisoners of war and civilians who find themselves in enemy hands. They also protect medical duties, medical personnel, medical units and facilities, and the means of medical transport. However, the Conventions leave gaps in important areas, such as the conduct of combatants and protection of civilians from the effects of hostilities. To remedy these shortcomings, two Additional Protocols were adopted in 1977 and, a third Additional Protocol was adopted in 2005. They supplement, but do not replace, the Geneva Conventions of 1949.

<sup>33</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) Geneva, 8 December 2005

<sup>34</sup> The Economic and Social Council, The Standard Minimum Rules for the Treatment of Prisoners 1955.

Rather, they aim to outline generally accepted principles and practices in treating prisoners and managing institutions. The basis for these rules is a combination of contemporary thought and the essential elements found in effective penal systems without delving into specific details. By providing a set of universally accepted rulebooks, these rules promote the humane treatment of prisoners and protect their rights. While the rules are not legally binding, they consider the general implications of modern human rights and criminal justice perspectives.<sup>35</sup>

Under international law, the Standard Minimum Rules ensure that men and women in the penal system are entitled to equal rights and treatment. However, the rules encompass a few specific rules that address women prisoners' particular needs and rights. These principles acknowledge women's challenges and vulnerabilities in prison and strive to safeguard their well-being and protection.

### *Separate Accommodation for Women Prisoners*

Rule 8(a) requires a separate arrangement of women from men prisoners to protect the inherent dignity of women prisoners. Further, if there is non-availability of proper space for male and female prisoners kept in the same institution, the premises where female inmates are kept should be entirely separate so that no business can take place between the male and female.<sup>36</sup>

### *Specific Provisions for Pregnancy and Children born to them*

Rule 23(b) prioritizes special accommodation and comprehensive care for pregnant women, including arrangements for childbirth outside the prison. To avoid stigmatization, the birth certificate of a child born in prison should not disclose the place of birth. These measures aim to break the cycle of social stigma faced by women reintegrating into society after imprisonment, fostering an inclusive and supportive environment for women and their children.<sup>37</sup>

### *Prevention of Corporal Punishment or Inhuman Treatment*

Rule 28 asserts that women prisoners must be protected from corporal punishment, degrading treatment, or inhumane practices. This rule underscores the significance of upholding women's dignity and human rights within the prison system. It acknowledges that subjecting women to such punishments can have severe physical, psychological, and

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<sup>35</sup> Danielle C. Jefferis, *Carceral Deference: Courts and Their Pro-Prison Propensities*, 92 *FORDHAM L. REV.* 983 (December 2023).

<sup>36</sup> The Economic and Social Council, *The Standard Minimum Rules 1955*, Rule 8.

<sup>37</sup> The Economic and Social Council, *The Standard Minimum Rules 1955*, Rule 23.

emotional repercussions, hindering their rehabilitation.<sup>38</sup>

### *Supervision of Women Prisoners by Women Officer*

Rule 53 emphasizes the importance of ensuring the presence of women officers for attending to and supervising women prisoners. While this rule does not completely exclude male staff, it sets forth certain restrictions and considerations to protect women from ill-treatment and preserve their privacy. To safeguard women prisoners from potential abuse or mistreatment, male staff should only have access to facilities where women are accommodated only when supervised by a female staff member. To protect women's privacy, male staff should not have access to bathroom areas or perform roles where women might be seen undressed by them.<sup>39</sup>

## **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966 AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966**

International covenants have significantly contributed to the development of international human rights. These covenants have profoundly impacted the protection of prisoners' rights, including the rights of women prisoners. By ratifying these covenants, states commit themselves to respecting, protecting, and fulfilling the rights of all individuals, including women prisoners. Article 3 of both the Covenants obliges state parties to ensure that men and women have equal enjoyment of all the rights outlined in the Covenants.<sup>40</sup> This provision recognizes the importance of gender equality and prohibits any discrimination against women prisoners.

## **CONVENTION AGAINST ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979**

The Convention marks an important milestone in the global pursuit of women's rights. In its Preamble, the Convention acknowledges the persistence of widespread discrimination against women, despite the United Nations' efforts to combat it. It is often hailed as the international "bill of rights" for women, signifying its significance in promoting gender equality worldwide. One of the notable aspects of the Convention is its comprehensive approach to discrimination, addressing both its "effect" and "purpose." It recognizes that discrimination against women

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<sup>38</sup> The Economic and Social Council, The Standard Minimum Rules 1955, Rule 28

<sup>39</sup> The Standard Minimum Rules, Rule 53(a)(b) and (c).

<sup>40</sup> UN General Assembly, ICCPR 1966, Article 3; UN General Assembly, ICESCR 1966, Article 3.

can take various forms, whether direct or indirect, international or domestic. The Convention's definition clarifies that any distinction, exclusion, or restriction based on sex that impedes enjoyment by women of their human rights constitutes discrimination.<sup>41</sup>

While the CEDAW does not specifically address the rights of women prisoners, it imposes obligations on States to promote gender equality. It calls for the elimination of discrimination in all aspects of women's lives, including within the criminal justice system. These obligations include incorporating the principle of equality into their legal systems, abolishing discriminatory laws, adopting measures to prohibit gender-based discrimination, and establishing tribunals and public institutions to protect women against discriminatory treatment.<sup>42</sup> It urges states to take proactive measures to ensure that women in detention are treated fairly, with their rights protected and their needs adequately addressed. Efforts to align national laws and practices with the principles outlined in CEDAW can contribute to creating a more inclusive and just prison system that respects the rights and dignity of all individuals, regardless of gender.<sup>43</sup>

#### **CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, 1984**

This is one of the first Conventions at the international level that deals explicitly with the prevention of torture. This Convention condemns torture, inhuman, and degrading treatment of prisoners by public officials. As per this Convention, torture occurs only when a public official is involved in the infliction of a higher degree of mental and physical pain.<sup>44</sup>

With regard to sexual violence and custodial rape, this was the first Convention that explicitly recognized that the rape of a female prisoner by a correctional officer constitutes torture, and sexual abuse violates the right to be treated with respect for human dignity and the right to privacy.<sup>45</sup> These gendered crimes also constitute cruel, inhuman, or degrading treatment. It obliges state parties to take adequate measures to prevent and punish such acts, ensuring the protection and justice for victims of sexual violence. It obliges each state party to conduct a systematic review of the interrogation rules, instructions, methods,

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<sup>41</sup> CEDAW 1979, Article 1

<sup>42</sup> Kent Roach, *International and Comparative Law on Compensating Miscarriages of Justice: From Proven Innocence to Wrongful Detention*, 62 *COLUM. J. TRANSNAT'L L.* 721 (2024)

<sup>43</sup> *Ibid.*

<sup>44</sup> UN General Assembly, *The Convention against Torture 1984*, Article 1.

<sup>45</sup> Erin Braatz, *Prison Administrative Law*, 74 *AM. U. L. REV.* 45 (October 2024).

practices and arrangements for the custody and treatment of prisoners to prevent any cases of torture during the interrogation process. It required effective legislative, judicial, administrative, and educational measures to prevent all forms of torture and provide support and rehabilitation for victims. As per the Convention, torture is not limited to acts causing physical pain or injury. It also includes acts that cause mental harassment, such as threats against a family or loved ones. Moreover, under the Convention, states must promptly establish national measures for torture prevention as an integral part of their international obligations.<sup>46</sup>

State parties must make torture a criminal offence punishable by law<sup>47</sup> and for that purpose necessary education and information regarding the prohibition against torture must be included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.<sup>48</sup> The rules of interrogation and information of people in custody must be systematically reviewed.<sup>49</sup>

#### **THE UNITED NATIONS RULES FOR THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR THE WOMEN OFFENDERS, 2010 (THE BANGKOK RULES)**

The Bangkok Rules are crucial to protecting women prisoners' rights. The existing regimes on the treatment of prisoners, thoroughly appropriate for men, are either silent or insufficient in addressing the unique issues and realities of women prisoners. Therefore, it addresses gaps in the existing rules by incorporating specific provisions on gender-sensitive issues related to women prisoners.<sup>50</sup> The Bangkok Rules do not replace the UN Standard Minimum Rules and the Tokyo Rules but supplement both by explicitly focusing on meeting the specific needs of women in prison.<sup>51</sup>

The Bangkok Rule 1 supplements Rule 6 of the Standard Minimum Rules by emphasizing the importance of addressing the unique rights of women prisoners without discrimination.<sup>52</sup> It clarifies that providing distinctive treatment to women prisoners should not be seen as

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<sup>46</sup> Ibid.

<sup>47</sup> UN General Assembly, The Convention against Torture 1984, Article 4.

<sup>48</sup> UN General Assembly, The Convention against Torture 1984, Article 10.

<sup>49</sup> UN General Assembly, The Convention against Torture 1984, Article 11.

<sup>50</sup> The Bangkok Rules 2010, Rule 1

<sup>51</sup> The Bangkok Rules 2010

<sup>52</sup> Ibid.

discriminatory but rather an essential step towards achieving gender equality in the criminal justice system. It recognizes that equal treatment in unequal situations can perpetuate injustice rather than eliminate it.

The Bangkok Rules devote Section III to Non-custodial Measures for women prisoners, acknowledging that female offenders do not pose a risk to society, and their imprisonment can make their social integration more challenging. The Rules suggested considering non-custodial measures when sentencing or deciding on pre-trial steps for women, especially in cases involving a pregnant woman or a child's primary caretaker.<sup>53</sup> The Bangkok Rules are designed to guide prison authorities and criminal justice agencies, such as policymakers, legislators, prosecutors, judges, and probation officers, to respond effectively to women prisoners' specific challenges and ensure their rights are protected. The Bangkok Rules require that women prisoners should not be discriminated against based on their gender or any other such as race, class, nationality, ethnicity etc. They should be given equal opportunities and access to justice, work, education, medical services, and resources as male prisoners. The rules emphasize the importance of regular health checkups for women prisoners, particularly regarding reproductive and sexual health issues.<sup>54</sup> The Bangkok Rules state that accommodation available to women prisoners should provide a regular supply of water, nutrient food, and hygiene products for personal care, including menstrual pads free of charge.<sup>55</sup>

Prison authorities should provide education and awareness about HIV prevention, treatment, and care. Specialized treatment programs should be made for substance abusers.<sup>56</sup> To preserve the dignity of women prisoners, body/strip searches of women prisoners should be carried out by the female staff only.<sup>57</sup> Women prisoners suffering from mental illness should be provided gender-sensitive, trauma-informed, and comprehensive mental health care and rehabilitation programmes. Additionally, the Rules underscore the significance of staff gender-

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<sup>53</sup> The review was initiated on 21st December 2010, resolution 65/230 at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice which, among other things, requested the Commission on Crime Prevention and Criminal Justice to establish, "... an open-ended intergovernmental expert group (...) to exchange information on best practices, as well as national legislation and existing international law, and on the revision of existing United Nations Standard Minimum Rules Treatment Prisoners so that they reflect recent advances in correctional science and best practices, with a view to making recommendations to the Commission on possible next steps." A/RES/65/230, at para. 10, 3.

<sup>54</sup> Ibid.

<sup>55</sup> UN Bangkok rules, 2010 Rule 5

<sup>56</sup> UN Bangkok rules, 2010 Rule 6

<sup>57</sup> UN Bangkok rules, 2010 Rule 19, 20

sensitive training in creating an environment that respects and upholds the rights of women prisoners while addressing their physical and mental health needs.<sup>58</sup> The Rules recognize the importance of supporting the children of women prisoners. The Rules state that women prisoners should be provided with appropriate support and resources to maintain contact with their children. Further, women should be incarcerated in prisons close to their homes or places that allow easy access to their families and children.<sup>59</sup> Thus, Bangkok Rules not only addresses the specific needs of women offenders but also recognizes the importance of family ties and the well-being of children. Overall, the UN the promotion of their specific rights and needs. Further, to complement the UN Bangkok Rules, the UN adopted the revised Standard Minimum Rules for the Treatment of Prisoners in 2015, known as the Nelson Mandela Rules.

#### **THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS, 2015 (*THE NELSON MANDELA RULES*)**

From the time of the adoption of the Standard Minimum Rules (SMRs) in 1955, the concept of prison populations and international human rights frameworks has undergone significant changes. Over time, it became evident that the SMRs had become outdated and inconsistent with evolving international standards. Further, the rules contain only a handful of provisions specifically directed to women prisoners. There is growing concern regarding the rights and treatment of women prisoners, at regional, national and international levels. A range of international fora has emphasized the need to review prison systems and the norms and standards regarding imprisonment with women's needs in mind. In recognition of these developments, the UN engaged in a four-year process of revision and decided not to only redraft the entire SMR but, instead, opted to carry out a "targeted revision" of terminology and concern areas.<sup>60</sup>

The revised SMRs, known as the Mandela Rules, were named in honour of Nelson Mandela, the late President of South Africa, who endured 27 years in prison.<sup>61</sup> This revised document emphasizes the importance of a gender perspective, highlighting provisions and situations that particularly address the gender-specific rights of women prisoners. The

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<sup>58</sup> UN Bangkok rules, 2010 Rule 10, 11

<sup>59</sup> UN Bangkok rules, 2010 Rule 26, 27, 28

<sup>60</sup> U.N. General Assembly, Resolution 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, (December 17, 2015)

<sup>61</sup> The Nelson Mandela Rules 2015, Rules 39-41

Rules prioritize the respect for prisoners' inherent dignity, ensuring that all women prisoners are treated with fairness and humanity. They emphasize the provision of adequate medical and health services, recognizing the specific healthcare challenges of women in custody. The medical confidentiality of women prisoners should be respected at all times. The Rules also address disciplinary measures, investigations of deaths and torture, and the protection of vulnerable groups, including pregnant women, mothers, and victims of gender-based violence. Access to legal representation, avenues for complaints, and independent inspection are crucial components of safeguarding women's rights within the prison system.<sup>62</sup>

The Rules encompass a set of regulations that cover various aspects of women's imprisonment, including their risk and security. For example, it requires that women prisoners must be supervised only by female staff. This provision is designed to ensure that women prisoners feel safe and comfortable in their environment and that they are not subjected to harassment or abuse by male staff members.<sup>63</sup> One of the key provisions of the Mandela Rules is the conjugal rights of women prisoners. It states that women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.<sup>64</sup>

The Rules also require that women prisoners should be provided with education and vocational training opportunities, as well as access to counselling and rehabilitation programs. Education and vocational training opportunities may enable them to acquire skills and knowledge that could help them reintegrate into society after their release. The Mandela Rules synthesize the latest development in international laws since the original minimum rules were established.<sup>65</sup>

### **MODEL PRISONS AND CORRECTIONAL SERVICES ACT 2023**

According to the directions of the Hon'ble Supreme Court in the matter of *Rama Murthy v. State of Karnataka*<sup>66</sup>, the Government of India went ahead to draft the Model Prison Manual in December 2003 which was outlined by the Bureau of Policy Research and Development, Ministry of Home Affairs. To prepare the Manual of 2003, the Bureau took help from the various recommendations of the Committees, the statistics of diverse nature, and many judicial orders. Once prepared, the said Model Prison

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<sup>62</sup> Ibid.

<sup>63</sup> The Nelson Mandela Rules 2015, Rule 58(2).

<sup>64</sup> The Nelson Mandela Rules 2015, Rule 23

<sup>65</sup> Taleed El-Sabawi, *Death by Withdrawal*, 71 UCLA L. REV. 378 (April 2024).

<sup>66</sup> AIR 1997 SC 1739.

Manual was further circulated to the administrations of all the State Governments and Union Territories to adopt and incorporate the manner in which the prison's management may be rendered more effective.<sup>67</sup>

Later on, the Government felt the need to update the Manual to reflect the contemporary period over the years. With that view in mind, an Expert Committee was constituted by the Ministry of Home Affairs in December 2014, which was tasked with revising the Manual of 2003. Consequently, the Manual of 2003 has since been replaced by the newer, more refined version of 2016. The Model Prison Manual of 2016 consists of 32 chapters which aim at bringing basic uniformity in the prison rules, and regulations concerning prison administration, the prisoner's rights, etc.<sup>68</sup>

The Ministry of Home Affairs has reviewed the pre-independence era acts, 'The Prisons Act, 1894' and 'The Prisoners Act, 1900' and prepared a 'Model Prisons and Correctional Services Act' in the year 2023 with the objective of holistically addressing all relevant issues relating to prison administration. The 'Model Prisons and Correctional Services Act' has been shared with all States and Union Territories with the request to take advantage from the same and enact a Prison Act in their jurisdiction, with such modifications which they may consider necessary.<sup>69</sup>

The primary objectives of this Act are to ensure the safe custody and security of prisoners, protect the rights and dignity of prisoners, promote correctional activities and rehabilitation processes, strengthen prison administration through technology and modern management methods and facilitate the reintegration of prisoners into society as law-abiding citizens.<sup>70</sup> This Act incorporates specific provisions for female prisoners, such as separate accommodation and prisons for women, special care for pregnant female prisoners, necessary facilities for female prisoners living with their children, mechanisms to investigate allegations of sexual harassment and gender-sensitive prison administration.<sup>71</sup>

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<sup>67</sup> Model Prison Manual For The Superintendence And Management Of Prisons In India 2003, available at: < [https://www.mha.gov.in/sites/default/files/2022-12/ModelPrisonMan2003\\_14112022%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/2022-12/ModelPrisonMan2003_14112022%5B1%5D.pdf)> (last visited on 10 May 2025)

<sup>68</sup> Model Prison Manual 2016, available at: < [https://www.mha.gov.in/sites/default/files/2025-04/PrisonManualA2016\\_20122024\\_2.pdf](https://www.mha.gov.in/sites/default/files/2025-04/PrisonManualA2016_20122024_2.pdf)> (last visited 10 May 2025)

<sup>69</sup> Ministry of Home Affairs, Government of India, Model Prisons and Correctional Services Act, 2023 (2023), available at: Ministry of Home Affairs Prison Reforms < [https://www.mha.gov.in/en/commoncontent/prison-reforms-pr-section?utm\\_source=chatgpt.com](https://www.mha.gov.in/en/commoncontent/prison-reforms-pr-section?utm_source=chatgpt.com)> (last accessed 12 June 2026)

<sup>70</sup> Ibid.

<sup>71</sup> Id.

'Prisons' is a State subject under Entry-4 (Prison Reformatories, Borstal Institutions and other institutions of like nature) in the State List (List-II) of the Seventh Schedule to the Constitution of India<sup>72</sup>, therefore, administration and management of prisons and prisoners is the responsibility of the respective State Government/ UT administrations. Given the significance of prisons in the Criminal Justice System, the Ministry of Home Affairs provides regular guidance and support to States/UTs on various issues relating to prison administration. States/UTs are provided assistance in the form of financial aid for technology driven projects and by sharing contemporary best practices/ guidelines on varied aspects of efficient prison administration.<sup>73</sup>

Regarding female prisoners, this law reflects principles enshrined in international standards such as the UN Bangkok Rules, the Nelson Mandela Rules, CEDAW, etc. It recognizes the specific needs of women, particularly pregnant women, mothers with children, and survivors of abuse, thereby introducing a gender-sensitive correctional framework.<sup>74</sup>

The key provisions for reformation and re-integration of women prisoners include gender-sensitive provisions with separate facilities for women prisoners and exclusive supervision by female staff. Emphasis is laid on privacy, safety, and dignity of female inmates. Support facilities for pregnant women, lactating mothers, and mothers with children in custody are also guaranteed in the Model Act.<sup>75</sup> Rehabilitation and correctional services include education comprising of digital learning, vocational training in gender-inclusive fields, psychological counselling and substance abuse treatment and case management system for individualized rehabilitation plans.<sup>76</sup> The Model Act ensures free legal aid, especially for women and undertrial prisoners.<sup>77</sup> Women inmates can access grievance mechanisms confidentially. Women Welfare Officers would be appointed to monitor and protect the interests of women prisoners.<sup>78</sup> The Model Act also has provisions for mother-child welfare by virtue of which children can stay with their mothers up to a certain age. Special importance is given to child nutrition and healthcare, early childhood education, regular contact with family if separated etc.<sup>79</sup> Parole, furlough, and premature release encourage reformatory and non-custodial measures for first-time or minor offenders, women with

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<sup>72</sup> The Constitution of India.

<sup>73</sup> Ministry of Home Affairs, Prison Reforms, available at: <[https://www.mha.gov.in/en/divisionofmha/Women\\_Safety\\_Division/prison-reforms](https://www.mha.gov.in/en/divisionofmha/Women_Safety_Division/prison-reforms)> (last accessed 15 May 2025)

<sup>74</sup> Supra note 69

<sup>75</sup> Model Prisons and Correctional Services Act 2023, §30, 31

<sup>76</sup> Model Prisons and Correctional Services Act 2023, §46

<sup>77</sup> Model Prisons and Correctional Services Act 2023, §56

<sup>78</sup> Model Prisons and Correctional Services Act 2023, §59

<sup>79</sup> Model Prisons and Correctional Services Act 2023, §32

dependent children, elderly or ill women inmates.<sup>80</sup> The Model Act encourages community-based re-integration through partnerships with non-governmental organizations and social workers for pre-release counselling, job placement and shelter services, social acceptance and reduction of stigma and creation of halfway homes and open prisons.<sup>81</sup> Other progressive features of the Model Act include, use of technology in prison management and inmate tracking, zero tolerance for custodial violence or sexual abuse, focus on mental health in addition to trauma-informed care for survivors of violence.<sup>82</sup>

The Model Prisons and Correctional Services Act, 2023 is a major step towards building a humane, inclusive, and rehabilitative prison system, particularly for women prisoners. It acknowledges the specific needs and vulnerabilities of all prisoners, including women, ensures access to justice, health, and dignity, and promotes a rights-based and reformatory approach to incarceration.

Despite it being extremely beneficial for the prisoners hardly any state has fully adopted it into a legal instrument. Maharashtra assembly has unanimously passed the Maharashtra Prisons and Correctional Services Act (MPCSA) 2024 with the intention of transforming the state's prison system in totality. The Act has introduced progressive reforms such as open prisons for woman, segregated facilities for women and transgender prisoners, etc. The Act is modelled on the Model Act of 2023, while strongly inspired, it is a distinct state-specific Act, not a direct adoption.<sup>83</sup> Tamil Nadu has drafted a new prison manual guided by the 2023 Model Act, currently awaiting state approval.<sup>84</sup> Recently the state of Andhra Pradesh has enacted a legislation called The Andhra Pradesh Prisons and Correctional Services Act, 2023<sup>85</sup> which aims at providing for the management of prisons and correctional services in the State of Andhra Pradesh, as well as for the safe custody, correction, reformation, and rehabilitation of prisoners, including women and their children as

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<sup>80</sup> Model Prisons and Correctional Services Act 2023, §51

<sup>81</sup> Model Prisons and Correctional Services Act 2023, §50, 55

<sup>82</sup> Model Prisons and Correctional Services Act 2023, §18, 33, 45

<sup>83</sup> The Times of India, Assembly Passes Landmark Bill To Overhaul Maharashtra Prison System, available at:

<<https://timesofindia.indiatimes.com/city/nagpur/assembly-passes-landmark-bill-to-overhaul-maha-prison-system/articleshow/116514649.cms>> (last visited 15 May 2026)

<sup>84</sup> The Hindu, Tamil Nadu To Soon Bid Adieu To Prison Rules Derived From Colonial Era Laws, available at: < <https://www.thehindu.com/news/cities/chennai/tamil-nadu-to-soon-bid-adieu-to-prison-rules-derived-from-colonial-era-laws/article67528838.ece?utm> > (last visited 15 May 2026)

<sup>85</sup> Act No. 16 of 2026.

law-abiding citizens.<sup>86</sup> Besides these three states none other has taken initiatives to modify their laws on prisoners in line with the Model Prisons and Correctional Services Act, 2023 as yet.

## CONCLUSION

Despite strong alignment with international standards, some shortcomings remain within the Model Act of 2023. The law does not explicitly prioritize non-custodial measures over imprisonment for female offenders, which is a key feature of the Bangkok Rules.<sup>87</sup> Not enough emphasis has been placed on trauma-informed psychological services for women who are victims of domestic violence or sexual abuse. Its implementation largely depends on its adoption by the respective states and the availability of necessary resources. The law does not contain any detailed provisions regarding specific assistance for the social and economic re-integration of women following their release from prison.<sup>88</sup>

The 'Model Prisons and Correctional Services Act, 2023' is a significant step towards aligning India's prison laws with international human rights standards regarding female prisoners. Through provisions such as separate accommodation, maternal healthcare, children living with incarcerated mothers, gender-sensitive searches, protection against sexual harassment, and rehabilitation programs, this law reflects the principles of the Bangkok Rules, Nelson Mandela Rules, CEDAW, etc.<sup>89</sup> However, the effective implementation of these international commitments will depend on their equitable application by various states, adequate funding, trained prison personnel, and a greater emphasis on community-based alternatives and post-release re-integration for female prisoners.<sup>90</sup> For instance, availability of work opportunities is extremely important for the successful re-integration of released female offenders but the Model Act of 2023 does not pay much heed to it.

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<sup>86</sup> The Andhra Pradesh Prisons and Correctional Services Act, 2026, available at: <[https://prsindia.org/files/bills\\_acts/acts\\_states/andhra-pradesh/2026/Act16of2026AP.pdf](https://prsindia.org/files/bills_acts/acts_states/andhra-pradesh/2026/Act16of2026AP.pdf)> (last accessed 20 June 2026)

<sup>87</sup> Supra note 51

<sup>88</sup> Supra note 69, 73

<sup>89</sup> Supra note 45

<sup>90</sup> Supra note 69, 74, 88