

State Legislative Brief

RAJASTHAN

The Rajasthan Prisons Bill, 2023

Key Features

- The state shall establish prisons. Separate wards shall be provided on the basis of gender, status of conviction, and nature of offence.
- The Director General Prisons shall oversee all prisons. Each prison shall have a Superintendent and a Medical Officer.
- Prisoners shall have certain rights including access to law, employment, and basic minimum needs. They will also have duties such as not committing any nuisance and following all rules.
- The state government shall formulate a policy for the care, protection, training, and rehabilitation of prisoners including women and young prisoners.

Key Issues and Analysis

- Prisoners have the right to write letters. The Superintendent may withdraw this facility on bad conduct. He may also censor letters for false information on the conditions in the prison. These provisions may violate their right to free speech.
- The Government will declare the Competent Authority which will issue regulations under the Bill and issue orders for preventive detention. Lack of guidelines on composition of the Competent Authority may exceed powers of delegation under a legislation.
- The Bill does not have provisions recommended by experts on prison reforms such as under trial review committees and CCTVs in prisons.

The Rajasthan Prisons Bill, 2023, was introduced in the Legislative Assembly on March 15, 2023. It seeks to repeal the Rajasthan Prisoners Act, 1960, and the application of the Prisons Act, 1894 in the state. It provides for the establishment and regulation of prisons and oversight of prisoners.

PART A: HIGHLIGHTS OF THE BILL

Context

Prisons are a key element of the criminal justice system.¹ While they help in maintaining law and order, they are also expected to ensure reformation and rehabilitation of prisoners.² Under the Constitution of India, 'prisons' falls under the state list.³ The Prisons Act, 1894 has been the primary law providing for the rights of prisoners, and the administration and regulation of prisons.⁴ States have their own enactments to supplement the provisions of this Act. The Rajasthan Prisoners Act, 1960 provides for custody and management of prisoners.⁵

Over the years, various experts and committees have examined the functioning of prisons in India and have highlighted issues such as overcrowding, neglect of health and hygiene, inadequate clothing and food, and torture and ill treatment.^{6,7} In 1996, the Supreme Court directed to create a new All India Jail Manual which would address such issues.⁶ It also asked concerned authorities to deliberate upon enacting a new Prison Act to replace the Prisons Act, 1894. Courts have also ruled on the rights of prisoners. The Supreme Court (1979) has held that prisoners have fundamental rights tailored to the limitations of imprisonment.⁸

The Ministry of Home Affairs has undertaken several prison reforms. It released the Model Prison Manual, 2016 which provides a framework for management of prisons and inmates. As of March 2023, 18 states/UTs have adopted the Manual.⁹ The Ministry also implements the project on Modernisation of Prisons which provides for modernising prison infrastructure and focuses on correctional administration such as skilling and rehabilitation.⁹ As per a press release, in May 2023, the Ministry of Home Affairs has finalised the Model Prisons Act, 2023 which would replace the Prisons Act, 1894.¹⁰ The Ministry noted that the 1894 Act focuses mainly on keeping criminals in custody and enforcement of discipline and order in prisons. It does not provide for the reform and rehabilitation of prisoners. The 2023 Model Act provides for setting up of and management of prisons. It also provides for welfare programs for prisoners such as vocational training and after-care and rehabilitation services. As on December 31, 2021, there were 22,938 inmates in Rajasthan's prisons.¹¹ It had the highest number of jails (144) and also, the highest number of open jails (39) in the country.¹¹ Further, the state had 6 inmates per staff which is lower than the national average of 8.¹¹

Key Features

- **Establishment of prisons:** The state shall set up prisons, including temporary and special prisons. Prisoners shall be separated based upon: (i) gender, (ii) status of conviction, and (iii) nature of offence. Further, there shall be separate wards for prisoners who are: (i) hardened or high-risk criminals, (ii) suffering from infectious diseases,

(iii) drug addicts, and (iv) arrested during non-violent agitation. Temporary prisons may be set up when there is not enough capacity in a prison, or if there is an outbreak of an epidemic disease.

- **Prison officers:** The state government shall appoint a Director General (DG) to exercise control and supervision over all prisons in the state. The government may appoint Inspector Generals (IG) and Deputy Inspector Generals (DIG) to assist the DG. Each prison shall have: (i) a superintendent, (ii) a medical officer and medical subordinate, (iii) jailor, (iv) welfare officer, and (v) custodial, medical, correctional, educational, and supporting staff. Prison officers shall neither have business dealings with prisoners nor have interests in supplying contracts to the prison. The superintendent shall manage the prison in all matters related to discipline, labour, punishment, and expenditure. The medical officer shall be responsible for hygiene and medical services.
- **Rights and duties of prisoners:** All prisoners in the state shall have certain rights which include: (i) human dignity, (ii) basic minimum needs, (iii) communication, (iv) access to law, and (v) employment. Further, they also have some duties including: (i) remaining strictly with their groups, (ii) not receiving/ possessing unauthorised items, (iii) not committing any nuisance, and (iv) following all prison rules and regulations.
- **Communication and visitors:** Prisoners shall have the right to write letters and have periodic meetings with family members and lawyers. Undertrial and civil prisoners may meet with visitors at designated times.
- **Offences and punishments:** The Bill classifies certain acts as prison offences committed by a prisoner and provides for punishment. Minor offences include: (i) going on a hunger strike, (ii) refusing to work. For such offences, punishment may include: (i) formal warning, (ii) loss of privileges given to prisoners in detention for a maximum of one month. Major offences include: (i) endangering the security of the prison, (ii) escaping or attempting to escape prison or legal custody, (iii) assault. Punishment for major offences includes: (i) separate confinement up to three months, (ii) postponement of privileges of parole up to one year from the next eligible parole release date. Appeals lie with the DIG for minor offences and DG for major offences.
- **Grievance redressal:** A Grievance Redressal Committee may be appointed for prisoners in each prison. The Committee shall consist of: (i) superintendent (Chairperson), (ii) jailor, (iii) medical officer, and (iv) welfare officer. If a prisoner is not satisfied with the Committee's decision, he may appeal to the DIG. Prisoners may also file a complaint to the IG or the District and Sessions Judge.
- **State Advisory Board:** A State Advisory Board for Prisons will advise the government on matters related to the management of prisons, including human resource development, modernisation of prisons, and post release programmes of rehabilitation. The Board will be chaired by the minister in charge of prisons, and will include secretaries of various departments, the director generals of police and prisons, and the directors of prosecution and of the state legal services authority.
- **Correctional initiatives:** The state government shall formulate a policy for the care, protection, training, and rehabilitation of prisoners including women and young prisoners. Further, the government shall constitute a Board of Skill Development Programme and Vocational Training for prisoners.

PART B: KEY ISSUES AND ANALYSIS

Restricting the right to write letters based on conduct may not be reasonable

Bill:
Clause
43

The Bill provides that a prisoner may write letters to relatives and friends. The facility of writing letters may be withdrawn by the Superintendent on bad conduct. The Superintendent shall examine each letter. He may ask the prisoner to delete parts of the letter which contain false details about the prison. These provisions may violate the right to free speech.

The Supreme Court has held that prisoners have fundamental rights, with some restrictions that arise from their incarceration.⁸ Writing letters may be classified as an exercise of the fundamental right to free speech. Reasonable restrictions on this right may be made only on grounds of national security, public order, decency or morality, contempt of court, defamation, or incitement to an offence.¹² Bad conduct in prison would not fall under this list.

Further, the Superintendent may also delete writings about the prison that he considers to be false. Again, false information is not a constitutional ground for restricting speech. Also, the Superintendent may not be a neutral judge to decide whether any information on conditions in a prison should be allowed to be communicated outside.

Competent Authority to be decided by the government

Bill:
Clauses
2 (b),
2(e), 66
(I), 73

The Bill defines the Competent Authority to be declared by the government. This authority has powers including preventive detention of a person, making regulations under the Act and issue orders to control emergency situations.

The Bill does not provide any guidance to determine the level of officer to be the Competent Authority. The question is whether these provisions exceed the permissible level of delegation in legislation.

Composition of the grievance committee and state advisory board

Bill: Clause 46, 64
Grievance Redressal Committee: The Bill provides for the appointment of a Grievance Redressal Committee in each prison for addressing grievances of prisoners. It consists of: (i) superintendent as Chairperson, (ii) jailor, (iii) medical officer, and (iv) welfare officer. If a prisoner is not satisfied with the Committee's decision, he may appeal to the DIG. All members of the Committee are prison officials and there may be a conflict of interest when complaints are against such officials. For instance, if a prisoner has been mistreated by the jailor, the same jailor would be part of the Committee addressing the complaint. That said, the prisoners may also make a complaint to the IG or the District and Sessions Judge (the only people not part of the prison administration system).

State Advisory Board for Prisoners: It will advise the government on several matters related to management of prisons, post release rehabilitation programmes, and correctional programmes with government and NGOs. The Board only consists of government officials including the Minister in charge prisons, director generals of prisons and police, and Secretaries from various departments. Since the Board will give recommendations on matters related to prison reforms, it may be argued that it should have representation of subject area experts and civil society.

Right to protection from torture and violence may be diluted

Bill: Clauses 44 (A) (i)
 Under the Bill every prisoner shall as far as it may be **expedient and practical** have the right to protection against torture, physical and verbal violence, and harassment from a staff member or prisoners. These are basic human rights and subjecting them to expediency and practicality may not be reasonable.

Penalising prisoners for refusing to eat

Bill: Clauses 28 (I) (f), 29
 Under the Bill, minor prison offences by prisoners include refusing to eat or going on a hunger strike. For such offences, punishment may include: (i) formal warning, (ii) forfeiture of earned remission of ten days, (iii) loss of privileges of one month. Penalising hunger strikes may be done to maintain discipline in the prison. The Allahabad High Court (1958) noted that prisoners refusing to take food affects discipline, and jails are not a place where choice is available in matters of food or otherwise.¹³ However, such strikes may also be a way to protest against issues related to jail conditions and administration. For instance, in 2000, prisoners in the Palayamkottai central jail in Tamil Nadu went on a hunger strike to protest against issues related to prisoners' rights, food quality, and basic hygiene.¹⁴ There may also be instances when prisoners fast as per religious practices. Under the prison laws of Delhi and Kerala, refusal to eat food is considered a prison offence unless it is on religious grounds.^{15,16}

Provisions for communication for convicted criminal prisoners absent

Bill: Clauses 41
 The Bill provides that every person detained in any prison shall have the right of communication subject to reasonable restrictions as prescribed. Due provisions will be made for persons with whom civil or unconvicted criminal prisoners wish to communicate. However, the Bill does not provide for such facilities for convicted criminal prisoners. This may include meetups with lawyers in case of convicted criminal prisoners who have filed an appeal against their conviction. The rationale behind this omission is unclear. The Supreme Court (1979) held that prisoners should have a right to visitation subject to security criteria (such as search and discipline).⁸

Key provisions for prison administration absent

Various experts and committees, and the Model Prison Manual, 2016 have made recommendations on prison reforms. The Rajasthan Prisons Bill, 2023, does not provide for some of these recommendations. We discuss them below.

CCTV systems in prisons

In 2015, the Supreme Court directed all states to install CCTV cameras in all their respective prisons.¹⁷ It noted that CCTV cameras will help prevent prisoners' human rights violations and help the authorities to maintain discipline among prisoners. Following the Court's directions, the Ministry of Home Affairs directed all states to install CCTV cameras in all prisons.¹⁸ Further, according to the Ministry's press release, the Model Prison Act, 2023 provides for the use of technology to ensure transparency in prison administration.

Undertrial review committee

As per the Code of Criminal Procedure, 1973 undertrial prisoners must be released if they have been incarcerated for half the maximum term of imprisonment for their alleged offence (except for offences punishable with death).¹⁹ As on December 31, 2021, India had 5.5 lakh prisoners of which 4.3 lakh (77%) were undertrials.¹¹ Rajasthan had 22,938 prisoners in jails, of which 17,954 (78%) were undertrials.¹¹ Undertrials in prisons may contribute to overcrowding. The Supreme Court had highlighted the issue of overcrowding in Indian prisons.⁶ The National Crime Records Bureau (2021) also noted the issue of overcrowding in prisons.¹¹ It refers to the situation in which more inmates are staying

than the sanctioned strength resulting in poor hygiene and lack of space for inmates.¹¹ As on December 31, 2021 Rajasthan had an occupancy rate of 100, lower than the all-India figure of 130.¹¹ Occupancy rate was highest in states like Uttarakhand (185), Uttar Pradesh (185), and Delhi (183).

To ensure the release of undertrial prisoners, in 2013, the Ministry of Home Affairs issued an Advisory directing the setting up of the Under Trial Review Committee in all districts.²⁰ In 2015, the Supreme Court directed National Legal Services Authority, along with Ministry of Home Affairs and State Legal Services Authorities to set up Under Trial Review Committees.²¹

Women prisoners with children

In 2006, the Supreme Court issued guidelines stating that female prisoners should be allowed to keep their children with them in jail till they attain the age of six.²² After that, the child shall be handed to a surrogate (mother's discretion) or sent to an institution run by the Social Welfare Department. Whenever possible, the child should not be transferred outside the town or city where the prison is located. The Model Prison Manual, 2016, provides for children up to the age of six to live with their mothers inside the prison if no other arrangements can be made.¹ Further, prison administration shall create a suitable environment for the children's upbringing. The Kerala Prisons and Correctional Services (Management) Act, 2010, provides for a nursery school and creche in every woman's prison.¹⁶

Drafting Error

Bill:
Clauses
28 (I) a
(II) a,
29, 34.

Classification of offences: The Bill classifies certain acts by prisoners as minor and major offences. Minor and major offences attract different punishments. Under the Bill, "any act or omission or wilful disobedience to any regulation of the prison declared by rules under the Act" has been classified as a minor as well as a major offence.

Serious prison offence: In cases of "serious prison offence", details such as name of witness proving the offence, and defence of the prisoner shall be recorded in the punishment book. The Bill does not define serious prison offence but defines major prison offences.

1. [Model Prison Manual, 2016](#), Ministry of Home Affairs.
2. [Implementation Of the Recommendations of All-India Committee on Jail Reform \(1980-83\)](#), Volume I, Bureau of Police Research & Development Ministry of Home Affairs, 2003.
3. Item 4, List II-State List, [Seventh Schedule](#), The Constitution of India.
4. [The Prisons Act, 1894](#).
5. [The Rajasthan Prisons Act, 1960](#).
6. [Shri Rama Murthy v State of Karnataka](#), Supreme Court, December 23, 1996.
7. [Report of All India Committee on Jail Reforms \(Mulla Committee\) Volume I and II](#).
8. [1980 AIR 1579, Sunil Batra v Delhi Administration](#), Supreme Court, December 20, 1979.
9. Unstarred Question No. 1660, Rajya Sabha, Ministry of Home Affairs, March 15 2023.
10. ["With the objective of holistically providing guidance and addressing the gaps in the existing Prisons Act, MHA under the able guidance of Home Minister Shri Amit Shah, finalises a comprehensive 'Model Prisons Act, 2023', which may serve as a guiding document for the States"](#), Press Information Bureau, Ministry of Home Affairs, May 12, 2023.
11. [Prison Statistics India 2021](#), National Crime Records Bureau, Ministry of Home Affairs.
12. Articles 19(1)(a) and 19 (2), The Constitution of India.
13. [AIR 1959 All 164, 1959 CriLJ 283, Lakshmi Narain vs The State, Allahabad High Court](#), August 28, 1958.
14. [2000 \(4\) CTC 1, Viduthalai Chiravasi Punar ... vs The State Of Tamil Nadu Rep By Its. , Madras High Court](#), June 20, 2000.
15. [The Delhi Prisons Act, 2000](#).
16. [The Kerala Prisons and Correctional Services \(Management\) Act, 2010](#).
17. [CRL.M.P. NO.16086 OF 1997 in CRL.M.P. NO.4201 OF 1997](#), Dilip K. Basu Versus State of West Bengal & Ors, the Supreme Court of India, July 24, 2015.
18. ["Hon'ble Supreme Court direction for installation of CCTV Cameras in all prisons of the Country"](#), Ministry of Home Affairs, December 10, 2015.
19. [Section 436A, The Code of Criminal Procedure, 1973](#).
20. ["Use of Section 436A of the Cr.P.C to reduce overcrowding of prisons"](#), Ministry of Home Affairs, January 17, 2013.
21. [Writ Petition \(Civil\) No \(s\).406/2013, Re-Inhuman Conditions In 1382 Prisons](#), Order, April 24, 2015.
22. [Writ Petition \(Civil\) No. 559 of 1995, R.D Upadhyay v. State of Andhra Pradesh & Ors.](#), Supreme Court, April 13, 2006.

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