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With this thought, we hereby present to you



**CONSTITUTIONAL RIGHTS OF CHILDREN LIVING WITH  
INCARCERATED MOTHER: A CRITICAL ANALYSIS OF WOMEN  
PRISONER AND THEIR CHILDREN**

**RESEARCH DISSERTATION SUBMITTED TO AMITY INSTITUTE  
OF ADVANCED LEGAL STUDIES, AMITY UNIVERSITY,  
UTTAR PRADESH**

**IN PART FULFILLMENT OF THE REQUIREMENT FOR THE  
DEGREE OF MASTER OF LAWS (LLM)**

**UNDER THE GUIDANCE AND SUPERVISION OF  
PROF. ARUN UPADHYAY**

**AUTHORED BY: JENIFER VANLALHRUAI**

**LLM (CONSTITUTIONAL LAW)**

**ENROLLMENT NO-AO342624029**

**BATCH: 2024- 2025**

## DECLARATION

This is to certify that the material submitted in the present research work titled “Constitutional Rights of Children Living with Incarcerated Mother : A Critical Analysis of Women Prisoner and Their Children” is my original and genuine work. The work has not been submitted anywhere, in whole or in part for any other university degree or diploma.





### **CERTIFICATE**

This is to certify that the Dissertation entitled “Constitutional Rights of Children living with Incarcerated Mother’s: A Critical Analysis of Women Prisoner and their Children” submitted by Jenifer Vanlalhruii, a student of Amity Institute of Advanced Legal Studies is a Bonafide research work for the award of the Degree of LLM (Constitutional law). She has been working under my constant supervision and guidance and her dissertation is complete and ready for submission.

I am confident that the current research dissertation is meritorious and satisfies all requirements established by Amity University, Noida, Uttar Pradesh for the awarding of the Master in Laws degree. I highly recommend that it should be considered for the award of the Degree of Master of Laws.

Date:

Place:

Prof. Arun Upadhyay

Supervisor

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Jenifer Vanlalhruii

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## LIST OF ABBREVIATIONS

Abbreviation	Full Form
ACRWC	African Charter on the Rights and Welfare of the Child
AWW	Anganwadi Worker
AIHRC	Asian Indigenous Human Rights Commission
AIR	All India Reporter
ART	Antiretroviral Therapy
ASHA	Accredited Social Health Activist
BPRD	Bureau of Police Report and Development
CBI	Central Bureau of Investigation
CCL	Child In Conflict with Law
CEDAW	Convention in Elimination of All Forms of Discrimination Against Women
CHC	Community Health Centre
CICL	Children in Conflict with law
CM	Chief Minister
CWC	Child Welfare Committee
CRPC	Criminal Procedure Code
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
DGP	Director General of India
DM	District Magistrate
DCPU	District Child Protection Unit
ECCE	Early Childhood Care and Education
FIR	First Information Report
FGD	Focus Group Discussion
GOI	Government of India
HCP	Habeas Corpus Petition
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICDS	Integrated Child Development Service
ICMR	Indian Council of Medical Research
IHM	Institute of Human Behavior and Allied Sciences
IPC	Indian Penal Act
ITA	Indian Tolls Act
JJ Act	Juvenile Justice (Care and Protection of Children) Act
JJB	Juvenile Justice Board
MHA	Ministry of Home Affairs
MLA's	Member of Legislative Assembly
MP	Member of Parliament
MWCD	Ministry of Women and Child Development
NABARD	National Bank for Agriculture and Rural Development
NACG	National Action Coordination Group
NALSA	National Legal Service Authority
NAPCC	National Action Plan for Children
NCERT	National Council of Educational Research and Training
NCPEDP	National Centre for Promotion of Employment for Disabled People
NDPS	Narcotics Drugs and Psychotropic Substances
NHM	National Health Mission
NHRC	National Human Rights Commission
NIC	National Informatics Centre
NIPCCD	National Institute of Public Cooperation and Child Development
NITI Aayog	National Institutional for Transforming India
NLU	National Law University
POCSO	Protection of Children Form Sexual Offences Act

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## ABSTRACT

This dissertation critically examines the constitutional rights of children in an Indian prison who are suffering along with their mothers. Despite the progressive guarantees enshrined in the Indian Constitution, namely Articles 14, 15, 21, and 39(e) & (f), effective enforcement of these rights to one of the most marginalized sections of society is egregiously lacking. The research brings gender justice, the child welfare axis, and the criminal justice arena together onto one stage to capture state insouciance and institutional oversight gnawing at prison children's dignity and human growth.

Via doctrinal methodology, the study analyses provisions within statute laws, court dicta, global agreements, and empiricist trends in an engagement arguing prisoners as women with dependents deserve concern and regard. Particular focus is given to the latest prison policy, the National Model Prison Guidebook, and the Integrated Child Protection Scheme (ICPS),

The dissertation further addresses legal framework shortcomings, absence of harmonized policy implementation in states, and elusiveness of children born or brought up within prison settings.

Lastly, the research provides policy and legal suggestions to guarantee a child-sensitive prison system that respects constitutional requirements and international commitments under the UN Convention on the Rights of the Child (UNCRC). In essence, this dissertation argues that children being raised with their mothers in prison are not mere extension of mother rights, but enjoy a constitutional and human rights foundation in and of themselves. An approach in the form of rights, rooted in humanity is therefore necessary in order to ensure the dignity and future of such marginalized children.

**Keywords:** Constitutional rights, Children in Prison, Incarcerated Mothers, Indian Penal System, Criminal Justice.

## CHAPTER I

### INTRODUCTION

The jailing of women, especially mothers, gives a special group of problems that go past just the jail system and hurt how well their kids do. Jailing mothers is a worldwide problem, but in India, it is a special case because of social, money, custom, and law things. The jailing of any mother surely disrupts her life, but it also has grave and lasting results for her kids, who often undergo feeling, thinking, and growth troubles. This section closely looks at effects from when mothers get locked up, if it involves children in the Indian area, also taking into account its rules, social issues, money issues, and other outlooks. The count of imprisoned women throughout India stays rather low beside men, but their experiences inside the legal system are greatly different. Per the National Crime Records Bureau (NCRB), women are about 4% of India's whole prison group. This is the population that is in jail. Many of such women are mothers, along with many being primary or sole caregivers of such children. The reasons women are locked up are different, but many are jailed for wrongdoings tied to being poor, abuse at home, or misdeeds with drugs, often caused by force or being on the edge of society.<sup>1</sup>

Indian female prisoners are mostly careful and locked up in congested and poorly furnished prisons, where their maternal needs are not fulfilled in totality. Although some legal provisions enable children to accompany their convicting mothers until a certain age, the prison environment is not favorable to the overall development of a child whatsoever. The Model Prison Manual, 2016, and the Prison Act, 1894, allow for the well-being of children in prison, but this compliance is uneven in states. The Indian legal system recognizes the unique needs of children born to or on the care of their mothers who are imprisoned. Article 39(e) and (f) of the Indian Constitution give precedence to the betterment of children and safeguarding from abuse and neglect. Also, the

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<sup>1</sup> National Crime Records Bureau, Prison Statistics India 2021, 5, 13, 15 (Ministry of Home Affairs, Govt. of India 2022), <https://ncrb.gov.in/en/crime-india>.

Juvenile Justice (Care and Protection of Children) Act, 2015, provides alternative care to children deprived of their parental care, such as children whose parents are incarcerated.<sup>1</sup>

The Indian Supreme Court has actively ensured the rights of children even in cases of mothers with criminal records. The Court provided guidelines on the well-being of children residing in prisons, such as proper nutrition, medical attention, and education, in the case of *R.D. Upadhyay v. State of A.P.* (2006)<sup>2</sup>. Even with this legal provision, the scene is barren. Child policies of mothers in prison are not consistent across Indian states and differ with respect to how they are cared for and treated. The majority of children are neglected, separated from their mothers at a young age, or placed in a situation where they are hindered in emotional and intellectual development. Mother imprisonment disbands the family, resulting in instability and financial hardship. Most of the Indian women prisoners are from working-class families, and imprisonment is another economic burden on the families. Children of the imprisoned mothers may be put into institutional care, foster care within their extended family, or abandoned to fend for themselves. The psychological effect of maternal imprisonment on children is extreme. The sudden loss of their primary caregiver can lead to feelings of abandonment, anxiety, depression, and social stigma. Studies indicate that children with an incarcerated parent are more likely to develop behavioral and emotional difficulties, including poor academic performance, delinquency, and increased chances of criminal activity in the future. Social stigma adds to the problem.

Children of incarcerated mothers often face discrimination and are ostracized by their communities. The stigma associated with having a parent in prison can lead to low self-esteem and social withdrawal, making reintegration into society more challenging. The lack of psychological counseling and support mechanisms for these children further deepens their emotional distress. The Indian legal system provides certain mechanisms for the care of children whose mothers are incarcerated. The Integrated Child Protection Scheme (ICPS) under the Ministry of Women and Child Development aims to provide

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<sup>2</sup> *R.D. Upadhyay v. State of A.P.*, (2006) 3 S.C.C. 677 (India).

institutional and non-institutional care for such children. Children may be placed in childcare institutions, foster care, or with extended family members. However, these arrangements often lack adequate oversight, and many children do not receive the necessary emotional and financial support. Institutional care, while providing basic necessities, may not fulfill the emotional and psychological needs of children<sup>3</sup>. The quality of care varies widely, and in many cases, children face neglect, abuse, or inadequate educational opportunities. The preference for family-based care is evident in policy discussions, but the lack of structured foster care systems in India limits viable alternatives. The role of non-governmental organizations (NGOs) has been significant in bridging the gaps left by state policies. Various NGOs work towards rehabilitating children of incarcerated parents by providing education, vocational training, and psychological support. However, these efforts remain fragmented and lack widespread implementation.

Several countries have developed progressive policies to mitigate the adverse effects of maternal incarceration on children. For example, in Sweden, non-custodial sentences are often preferred for mothers with dependent children, reducing the number of children affected by parental imprisonment. In Brazil, the 'Mother-Child House' system allows mothers to serve their sentences in less restrictive environments, ensuring that children maintain a close bond with their mothers. In contrast, India's approach remains largely punitive, with limited consideration for alternative sentencing options such as probation, community service, or house arrest for mothers with young children. Introducing non-custodial measures and expanding rehabilitation programs could significantly improve outcomes for both incarcerated mothers and their children.

This dissertation seeks to critically analyze the constitutional rights of children living with incarcerated mothers by examining the extent to which current legal frameworks align with<sup>ii</sup> international human rights standards and principles of justice. The study will explore key legal cases, policy approaches,

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<sup>3</sup> Ministry of Women & Child Development, Integrated Child Protection Scheme (ICPS): A Centrally Sponsored Scheme for Child Protection (2009), <https://wcd.nic.in/schemes/integrated-child-protection-scheme-icps>



and comparative perspectives to identify best practices and propose necessary reforms. By highlighting the deficiencies in existing legal structures, this research aims to contribute to the development of a more child-centered approach to criminal justice that prioritizes the well-being of children alongside the legal treatment of incarcerated mothers.

These children usually undergo discrimination and social exclusion from their communities. Low self-esteem and social withdrawal arise in them as a result of stigma for having a parent who is imprisoned, and reintegration into society is difficult. In the absence of psychological counseling and support systems in the case of such children, their emotional trauma is increased. The Indian legal system offers some provisions for taking care of children whose mothers are imprisoned. Integrated Child Protection Scheme (ICPS) launched by the Ministry of Women and Child Development provides institutional and non-institutional care to children of such a type. Children are placed in childcare institutions, foster care, or extended family members. But they are without proper supervision, and most of the children do not have economic and emotional support. Institutional care, although guaranteeing basic care, will most probably fail to meet the children's psychological and emotional needs. Quality of care is extremely differentiated, and in most instances, children are exposed to neglect, abuse, or inappropriate education. Preference for family foster care is also voiced at the level of policy debate, but the fact that India lacks well-structured foster care systems restricts meaningful alternatives. The activities of non-governmental organizations (NGOs) have played a key role in filling the voids left behind by state policy. Different NGOs work on rehabilitating children of prisoners through education, training, and counseling. However, these efforts are piecemeal and have yet to be implemented at a mass scale.<sup>4</sup>

A number of countries have come up with creative policies to counteract the negative impacts of maternal imprisonment on children. In Sweden, for

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<sup>4</sup> National Commission for Protection of Child Rights (NCPCR), Report on the Children of Women Prisoners in India (2013), <https://ncpcr.gov.in/showfile.php?lang=1&level=2&&Sublinkit=1076&lid=1056> (emphasizing NGOs' efforts in educating, vocational training, and psycho-social counseling of prisoners' children).

instance, mothers with dependent children receive non-custodial sentences so that the number of children impacted by parental imprisonment is limited. In Brazil, the 'Mother-Child House' program enables mothers to complete their sentences in less restrictive settings so that children are not separated from their mothers. In contrast, India's response remains overwhelmingly punitive, with scant attention paid to alternative sentencing such as probation, community service, or house arrest for mothers of young children. The use of non-custodial measures and the expansion of rehabilitation programs could be a game-changer in both the lives of incarcerated mothers and their children. This dissertation aims to critically analyze the constitutional rights of children whose mothers are in prison by examining how far existing legal frameworks lag behind international human rights standards and concepts of justice.

The research will examine key legal cases, policy strategies, and comparative insights to determine best practices and recommend needed reforms. By emphasizing the shortcomings of current legal frameworks, this research hopes to contribute to the development of a more child-focused strategy for criminal justice that also gives primacy of place to the health of children and to the legal processing of mothers in prisons.

## **1.2 RESEARCH PROBLEM AND JUSTIFICATION**

Women's imprisonment has long-term consequences, not just for the women but also for their children who live with them in prison or are left behind in insecure circumstances. The constitutional rights of these children—especially in India—are an unexplored but significant field of study. In spite of the promises made by the Indian Constitution and international human rights conventions, the children of prison mothers are still subject to social stigma, refusal of access to proper healthcare and education, and emotional distress owing to their special condition. The current legal regime tends to refuse them their special vulnerability and needs, resulting in a breach of their fundamental rights.

The key issue is the lack of legal provisions and their implementation. Although Article 15(3) of the Indian Constitution permits special provisions to be made for children, and Article 39(e) and (f) mandate the state to ensure that children are not abused and their development kept intact, there is no concrete

legislative or policy mechanism in place specifically targeting children with imprisoned mothers. Indian criminal justice system, as per international conventions such as the United Nations Convention on the Rights of the Child (UNCRC), is aware of children's rights, but the extent to which such rights are practiced in prison cells is uncertain. Indian prisons are meant for housing adult criminals, and it is not the ideal destination for children, whose well-being, development, and rehabilitation become issues of concern. Another urgent area of concern is the absence of homogeneity in policy among Indian states for sentenced mothers' children.

The Model Prison Manual, 2016, sets some criteria for the situations under which children may remain with their mothers in prison, but its enforcement varies widely. There are crèches and nursery facilities in some prisons, whereas others do not even have the most basic of facilities<sup>5</sup>. This inconsistency results in an unequal experience for children depending on territorial jurisdiction and administrative capability and not constitutional promise. The absence of a standard system for their treatment and rights raises questions about the fulfillment of the state's commitment to protect the rights of every child. Furthermore, children separated from their jailed mothers also face certain issues. They are usually institutionalized in state institutions, foster care, or with relatives who are not necessarily in a position or attitude to properly care for them.

Psychological trauma of separation from a parent, combined with the shame of having a parent in prison, usually leads to social isolation and fewer opportunities to have a stable future. There are not enough legal safeguards for ensuring that the children get their rightful emotional support, financial security, and access to education, thereby violating their very basic rights of equality, dignity, and development.

Comparative law analysis of other countries identifies the shortcomings of India's method. Brazil and South Africa have adopted liberal policy

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<sup>5</sup> Ministry of Home Affairs, Model Prison Manual 2016, ch. XXVII (Women Prisoners), at 301– 312 (Govt. of India 2016), <https://www.mha.gov.in/sites/default/files/ModelPrisonManual2016.pdf>.

approaches that advance the best interest of the child in the determination of imprisoning mothers. For example, a few states have established alternative sentencing provisions for pregnant women and mothers of young children, under which they can receive their sentence through house arrest or community- based programs instead of in a regular prison. This is based on the consideration that punitive imprisonment negatively impacts children disproportionately and aims to strike a balance between justice and the welfare of children. The absence of such provisions in India necessitates an urgent review of existing laws and policies.

The research issue, hence, is the inability of the Indian legal system to protect the constitutional rights of children of prisoners. It is important to critically examine how the current laws may be amended so that the children do not lose their basic rights. This research will critically examine the constitutional protections of the rights of children, the policy and legal framework that regulates women prisoners and children, and the practical difficulties of protecting their welfare. In comparative analyses with other jurisdictions, this research seeks to make recommendations for legal reforms to conform to international human rights norms and the constitutional requirement of protecting the best interests of the child. The rationale for this study is inherently linked with both legal and humanitarian objectives.

Children raised with mothers in prison are among the most vulnerable groups of individuals in society who are never considered during policy discussion regarding their rights. The rule of the best interests of the child, as protected in different documents of human rights, like the UNCRC, must be paramount in any legal solution to this case. Inadequate policies and protections not only deny them their constitutional rights but also continue cycles of poverty, trauma, and social isolation. Further, this study is important because it identifies an issue that crosses a variety of disciplines—law, human rights, gender justice, and child welfare. Where these intersect, the problem must be solved in a comprehensive way, not as a problem of simple penal reform.

Imprisoned mothers, already in most cases socio-economically disenfranchised, are also denied legal knowledge or facilities necessary to



advance the interests of their children. The state's role is not only to legitimize the presence of children with their imprisoned mothers but to ensure their all-around development—physical, emotional, educational, and social—is protected.

### **1.3 RESEARCH OBJECTIVES**

1. Discuss Constitutional Rights of Imprisoned Mothers' Children: Enumerate provisions in the constitution to guarantee children's rights in families with imprisoned mothers, citing the right of children to care in the family, school right, and secure treatment where there is no abuse.
2. Evaluate the Effect of Incarceration on Children's Welfare: Examine the psychological, social, and developmental effects on children of incarcerated mothers such as trauma, stigma, and interrupted education.
3. Assess Legal Policies and Structures: Critically assess the laws and policies covering imprisoned mothers and children, justifying loopholes and inconsistencies in protecting children's rights.
4. Suggest Reforms to Improve Child Welfare: Formulate proposal concepts for law and policy reforms for improved children welfare of prison mothers so that their constitutional rights are protected

### **1.4 RESEARCH QUESTIONS**

1. How are constitutional provisions protecting the rights of children with imprisoned mothers?
2. What are social and psychological consequences on children having mothers in jail?
3. How effective are current legal structures in safeguarding the rights of children of jailed mothers?
4. What legislative and policy reforms are required to better protect the welfare and rights of children impacted by maternal incarceration.

## **1.5 COMPARATIVE ANALYSIS**

### **a) Doctrinal Approach**

Doctrinal approach or "black-letter law" methodology is concerned with the interpretation of legal literature, statutes, court judgments, and canons of law in determining the extent of protection extended to children born to and growing up with their mothers in prison. The approach allows us to know what particular rights are being provided by the law and how, according to various interpretations by various courts of various jurisdictions, the courts have interpreted such rights.

In India, doctrinal writings show that although the Constitution, law, and judicial pronouncements recognize the unique needs of children residing in prisons, no comprehensive legal regime is directed to their well-being.<sup>6</sup> This is to be compared with nations such as the United Kingdom and Germany, where there are special legal provisions and systematic policies to ensure that these children are not mere extensions of the mothers' legal status but individuals in their own right with autonomous rights.

For example, the UK has formal standards on mother-and-baby units in prisons to ensure children with good health care, education, and psychological treatment. Likewise, Germany's legislation requires divorced living arrangements for jail mothers and their children. These legislative efforts illustrate how child-friendly prison policy is largely decided by legal doctrine.

### **(b) Analytical Approach**

Instead of the doctrinal method, the analytical approach measures the effect that provisions in law actually have on children who live inside prisons. It takes into consideration socio-legal implications, policy effectiveness, and field conditions to decide if the existing legislation provides its intended impact.

Transposing this model to India, it can be seen that despite judicial guidelines and legislative protections, the application of child welfare policies

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<sup>6</sup> Law Commission of India, Report No. 245: Arrears and Backlog: Generating Additional Judicial (Wo)manpower 44–45 (2014); see also Ved Kumari, Children of Incarcerated Parents and the Indian Legal System, 50(10) Econ. & Pol. Wkly. 59 (2015) .

within prisons is still in disarray. Reports and studies suggest that Indian prison children are facing malnutrition, inadequate health care, and a general lack of access to education. This suggests a lack of synchronization between law theory and reality and calls for more policy interventions and reforms.

A comparative analytical view suggests that nations such as the Netherlands and Sweden use other types of sentences, for example, rehabilitation within the community for mothers with infant children. Not only do these policies minimize psychological trauma in prison life but also enable children to develop in a superior environment. This contrast to India highlights the significance of the judicial and legislative institutions not only enacting legislation but also imposing their effective use through checks and balances instituted.

#### (c) Wider International Comparisons and Their Implications for India

A cross-jurisdiction comparative analysis determines certain additional best practices that can be used by India. Other such international human rights covenants such as the UN Convention on the Rights of the Child (CRC) <sup>7</sup>enjoin the notion of the child's best interest. A select number of jurisdictions such as Canada and Norway have implemented these tenets within local legal systems in such a way that children whose mothers are inmates are provided access to state-financed care and are not left prey to institutional neglect.

In Norway, rehabilitation is accorded top priority over punishment so that mothers can be imprisoned in open-prison settings with facilities for family visits and child-friendly settings. India can follow this model, as prison conditions in India are still tough and not properly child-sensitive.

Likewise, South Africa, blessed with time-honored traditions of social justice movements, has evolved alternative systems of sentencing that permit women having dependent children to undergo sentences through house arrest or community-based rehabilitation programs. This may be considered in line with India's vision of social justice embedded in the Constitution and even looked at

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<sup>7</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

for adoption with a view to reducing the negative effect of incarceration on children.

### **1.6 HYPOTHESIS**

- Incarcerated mothers and their children have enormous constitutional concerns that are largely left unexamined under existing legal systems.
- Existing policy fails to deal with the specific needs of children who endure maternal incarceration and, in turn, impact their constitutional rights.
- Enacting child-centered reforms in the criminal justice system can substantially enhance the welfare and constitutional rights of children whose mothers are imprisoned.

### **1.7 STUDENT LEARNING OUTCOME**

The dissertation aims to achieve the following learning outcomes:

1. To study the Indian constitutional jurisprudence and other legislation to understand the legal and normative frameworks concerning the rights of children with incarcerated mothers.
2. To assess the multidisciplinary issues of these children within the boundaries of the existing legal framework of criminal justice.
3. To align with other child friendly policies, construct procedures and policies framework at national and international level to advance transformative advocacy focused on these reforms.
4. Develop a commitment to social justice by advocating for constitutional and human rights of children born into or affected by the criminal justice system.
5. Identify policy gaps and propose reforms to create more inclusive, child-friendly legal and correctional systems.

### **1.8 RESEARCH METHODOLOGY**

The research methodology employed in the present study is doctrinal and analytical and relies very heavily on secondary data to critically examine the constitutional rights of children whose mothers are incarcerated and the sufferings of women prisoners in India. The research analyzes milestone constitutional provisions such as Articles 14, 15(3), 21, and 39(e) & (f), as well as applicable statutory regimes such as the Prisons Act, 1894<sup>8</sup> and the Juvenile Justice (Care and Protection of Children) Act, 2015. Milestone judicial pronouncements such as *R.D. Upadhyay v. State of Andhra Pradesh* (2006) are analyzed for their effect upon women prisoners' and their children's rights. The research also includes government agency (e.g., NCRB, NHRC) and international agency (e.g., UNICEF) reports in order to give a general overview of the problem. There is even a comparative overview of international policy, e.g., the UNCRC and the Bangkok Rules, in order to find the loopholes in Indian policies and suggest possible reforms. The study does not include the collection of primary data, i.e., fieldwork or interviews, and draws upon available legal, policy, and scholarly sources.





<sup>8</sup> The Prisons Act, No. 9 of 1894, India Code (1894).



## CHAPTER II

### CONCEPTUAL AND THEORETICAL FRAMEWORK

#### **2.1. KEY CONCEPT AND DEFINITION**

##### **(a) Children's Constitutional Rights**

Constitutional children's rights are legal and moral rights bestowed on a person under the age of 18 years in the interest of their welfare, development, and integration into society. They are based on general principles of human rights and most probably enshrined in international covenants, national constitutions, and legislation. They are testimonies of kids' inherent frailty and endeavor to offer proper protection to them in a quest to continue strengthening them physically, emotionally, as well as mentally.

The fundamental rights of the children in India are based upon a series of provisions of the Constitution such as the right of equality (Article 14), prohibition against discrimination (Article 15), and the right of life and personal liberty (Article 21). Additionally, Article 39(e) and 39(f) of Directive Principles of State Policy obligate the state to give so that the children are not exploited and afforded opportunities for health development.

Internationally, children's rights have been interpreted through international conventions such as the United Nations Convention on the Rights of the Child (UNCRC). India ratified the UNCRC in 1992, when it came into force mandatory rights such as the right to survive, protection against cruelty, and a right to education and healthcare. These are incorporated within the constitutional structure of nations, where they are provided with express legal protection to the child.

Children living in prison with their sentenced mothers constitute yet another legal group that is neither criminals nor subject to the brunt of prison life. Identification and enforcement of their constitutional rights are of paramount importance to provide for their well-being, dignity, and overall

welfare. An organized legal system in line with national and international norms needs to be adopted in order to secure these rights.

#### **(b) Incarcerated Mother**

An incarcerated mother is a mother who has been arrested or convicted of a criminal act and is incarcerated in a correctional institution or is in jail awaiting trial and has responsibility for her child or children. Incarceration can be the result of a variety of crimes, from relatively lesser crimes to extremely serious crimes, and has serious consequences for the well-being of both the mother and the children.

The term "incarcerated mother" goes beyond the criminological definition of being incarcerated and includes the larger social, psychological, and economic impacts of maternal incarceration. Prison mothers tend to have certain concerns, such as separation from their children, poor support systems, and the negative connotation of imprisonment. In contrast to male prisoners, who leave their children in the mother's custody, female prisoners often experience family breakdown, with the children being taken into foster homes, institutions, or by relatives. Mother imprisonment is a complex problem in India because there are no all-around policies that respond to both mother and child requirements. The law does afford some protection, for example, allowing children who are six years and younger to live with their mothers in prison, as enshrined in the Model Prison Manual, 2016.<sup>9</sup> The prison setting is not ideal for the development of a child and poses issues around the psychological and emotional impact of such a childhood.

#### **(c) Child-Sensitive Justice**

Child-sensitive justice is a theory of law and practice in courts that gives priority to children's rights, interests, and best needs at every step of court procedures. It protects children from being treated as adults and rather treats them with dignity, respect, and compassion considering their age, stage of development, and psychological vulnerability. The principle can be applied to all areas of law

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<sup>9</sup> Ministry of Home Affairs, Model Prison Manual 2016 (Govt. of India 2016), <https://www.mha.gov.in/sites/default/files/ModelPrisonManual2016.pdf>.

dealing with children, such as criminal justice, family law, child protection, and administrative law.

The concepts of child-sensitive justice are founded on international human rights instruments, specifically the United Nations Convention on the Rights of the Child (UNCRC). Child-sensitive justice in India is implemented through various pieces of legislation and policies, including the Juvenile Justice (Care and Protection of Children) Act, 2015<sup>10</sup>, with an emphasis on rehabilitation and restorative measures instead of penalizing measures for children in conflict with the law. Equally so, the Protection of Children from Sexual Offences (POCSO) Act, 2012, provides for child-friendly proceedings to victims such as in-camera trials and special courts in order to reduce trauma. Adjusting the legal procedures in a way that children are not re-traumatized by the justice system is a defining feature of child-sensitive justice.

## **2.2 CONSTITUTIONAL PROTECTIONS UNDER ARTICLE 14,15(3),21,39(e) & (f), AND 45 OF THE INDIAN CONSTITUTION**

### **a. Article 14 of the Indian Constitution: Women Prisoners**

***Equal Legal Treatment:*** Women prisoners are accorded equal legal treatment to all citizens. Discrimination based on sex or gender, prison-based, or socio-economic is prohibited.

***Judicial Precedents:*** The Supreme Court has emphasized prison reforms that are gender-sensitive and equal treatment to women prisoners on account of their intrinsic vulnerabilities.

***Special Protections & Affirmative Action:*** While Article 14 mandates equality, reasonable classification is also permitted. Women prisoners thus get special treatment because of their special social, psychological, and biological needs. Such includes custody protection, maternity, and special women's prisons.

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<sup>10</sup> The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, India Code (2016).

## Children Living with Incarcerated Mothers

***Equal Protection Before the Law:*** Children, even though innocent, are prone to discrimination due to the prison term of their mothers. Article 14 ensures protection to such children against withholding of food, healthcare, and education.

***Judicial Recognition:*** The courts have recognized that children with jailed mothers do not need to suffer because of their mother's criminal record and have been calling for reforms for safeguarding their rights.

### (b) Article 15(3) of the Indian Constitution

#### 1. Interpretation of Article 15(3)

Article 15(3) of the Indian Constitution carves an exception to Article 15(1) based on the doctrine of non-discrimination. Article 15(3) declares: "Nothing in this article shall prevent the State from making any special provision for women and children." In other words, while the Constitution disallows sex discrimination, the government can make special provisions in favor of women and children and also protect and promote them.

#### Protection of Women Prisoners Under Article 15(3)

##### **Special Prison Facilities & Policies:**

- Different prisons for women separately or different prison wings for safeguarding and maintaining privacy.
- Different prisons for pregnant women, new mothers, and breastfeeding mothers (for example, better healthcare, nourishing food, and maternity leave for undertrials).
- Safety from custodial violence and sexual harassment at jail.

**Judicial Precedents & Government Policies:** *Jheerla Barse v. State of Maharashtra* (1983) – The Supreme Court emphasized separate provision of legal aid and improved facilities to women prisoners. 2006 Model Prison Manual – Suggests separate treatment and facilities for women prisoners.<sup>11</sup>

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<sup>11</sup> *Jheerla Barse v. State of Maharashtra*, (1983) 2 S.C.C. 224 (India) (highlighting the importance of legal aid and better conditions for women prisoners); see also Ministry of



## **Protection for Children Growing Up with Incarcerated Mothers Under Article 15(3)**

### **Child-Friendly Prison Environment**

- The children's inmates (typically 6 years and below) of convict mothers are required to receive good quality foods, medicines, and education.
- Prison nursery and creche for the protection of children.

Alternatives to Punishment for Mothers: Courts have recommended releasing women with infant children on bail or issuing them alternative sentences (house arrest, open prisons). In *R.D. Upadhyay v. State of A.P.* (2006), the Supreme Court made directives for the custody of children accompanying their mothers in jails, prioritizing their education, playground, and periodic medical checkups.

Rehabilitation & Social Welfare: Special women prisoners' rehabilitation programs to stop re-offending and ensure children's future. Involvement of the government and NGOs in the rehabilitation of the mother and child after release.

Therefore, Article 15(3) is a highly significant provision that allows the state to take proactive steps in protecting the dignity and rights of women prisoners and their children in line with India's gender justice and child welfare pledge.

### **3. Protection for Children Living with Incarcerated Mothers Under Article 15(3)**

#### **Child-Friendly Prison Environment:**

- Children (typically up to 6 years) permitted to accompany imprisoned mothers should be provided with healthy food, medical care, and education.
- Creches and nurseries within prisons for the well-being of children.

Alternatives to Incarceration for Mothers: Courts have recommended that mothers with infant children be released on bail or alternative sentencing (house arrest, open prisons). In *R.D. Upadhyay v. State of A.P.* (2006), the Supreme Court established guidelines regarding the welfare of children who reside in

Home Affairs, Model Prison Manual 2016, ch. XXVII (Govt. of India 2016),  
<https://www.mha.gov.in/sites/default/files/ModelPrisonManual2016.pdf>



jails with their mothers, such as access to education, play facilities, and regular medical checkups<sup>12</sup>.

**Rehabilitation & Social Welfare:** Special rehabilitation schemes for women prisoners to avoid re-offending and secure children's future. Government and NGOs are involved in the post-release rehabilitation of mother and child.

Therefore, Article 15(3) is an important provision that allows the state to take positive steps to secure the dignity and rights of imprisoned women and their children, as per India's commitment to gender justice and child welfare.

### (c) Protection Under Article 21 of the Indian Constitution

#### Understanding Article 21

#### **Article 21 of the Indian Constitution reads:**

"No one shall be deprived of his life or personal liberty except according to procedure established by law." This basic right assures the right to life and personal liberty to everyone, including prisoners and children who live with their imprisoned mothers

**Shield for Article 21 Incarcerated Women**

#### Right to Live with Dignity in Jail:

Though some rights are taken away from prisoners by their incarceration, prisoners do not sacrifice their right to life and dignity. In *Sunil Batra v. Delhi Administration* (1978), the Supreme Court of India ruled that prisoners have a right to human treatment, and custodial brutality or solitary confinement resulting in mental torment is a violation of Article 21<sup>13</sup>.

#### Right to Health & Maternity Care:

Pregnant females, lactating females, and women with child need special medical amenities in jail. Proper diet, medical attention, and sanitation were ordered by

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<sup>12</sup> *R.D. Upadhyay v. State of A.P.*, (2006) 3 S.C.C. 677 (India) (laying down guidelines to provide education, play area, nutrition, and regular medical checkups to children who stay in prisons along with their mothers).

<sup>13</sup> *Sunil Batra v. Delhi Admin.*, (1978) 4 S.C.C. 494 (India) (holding that prisoners too are entitled to treatment in a manner which is humane and that custodial brutality or solitary confinement, leading to mental anguish, infringes Article 21 of the Constitution).

the Supreme Court in *R.D. Upadhyay v. State of A.P.* (2006) for pregnant and lactating prisoners. Refusal to give healthcare in jail is a breach of Article 21, as clarified in *Poonam Lata v. M.L. Wadhawan* (1987).

#### Protection against Sexual Exploitation & Custodial Violence:

Women prisoners face custodial violence, including sexual abuse. The Supreme Court in *Sheela Barse v. State of Maharashtra* (1983) highlighted the deployment of separate female staff at women's prisons to avert sexual abuse. Right to privacy (held in *K.S. Puttaswamy v. Union of India*, 2017) extends to women prisoners as well, which shields them from intrusive searches and surveillance.

#### Protection for Children Living with Incarcerated Mothers Under Article 21

##### **(a) Right to Food, Shelter, and Healthcare:**

Innocent children and their mothers who are in prison do not deserve to suffer due to the imprisonment of their mother. According to the Supreme Court in *R.D. Upadhyay v. State of A.P.* (2006), the children should be provided with proper food, medical attention, education, and playground facilities.

##### **(b) Right to Education & Development**

Deprivation of education to children in prison goes against their basic right to education (Article 21A). The Supreme Court ordered in *R.D. Upadhyay* case that children aged six and above are to be enrolled in schools or alternative childcare centers.

##### **(c) Right to Alternative Care:**

In case prison is not suitable, the children can be put in childcare homes or foster care. Juvenile Justice (Care and Protection of Children) Act, 2015 lays down norms for maintenance of children away from sentenced mothers. Article 21 has been interpreted by the Supreme Court to curb the practice of imprisoning people for inhuman treatment. The milestone judgements are:

Huss Ainaru Khatoon v. State of Bihar (1979): Declared speedy trial as a constitutional right to prevent lengthy detention of women accused. Francis Coralie Mullin v. Administrator, Delhi (1981): Considered that even prisoners are subject to minimum human dignity, like proper medical care and humane treatment. State of Maharashtra v. Prabhakar Pandurang (1966): Concluded that convicted prisoners also possess minimum human rights under Article 21.

### Challenges & The Way Forward

In spite of these constitutional safeguards, there are problems, Crowded and dirty prisons insult the dignity of female prisoners and their children. Denial to implement Supreme Court directions to prison conditions and child welfare. Requirement for alternative sentencing (probation, community service, or house arrest) for mothers with young children.

#### (d) Protection Under Article 39(e) of the Indian Constitution

##### Interpretation of Article 39(e)

Article 39(e) is framed under the Directive Principles of State Policy (DPSP) in Part IV of the Indian Constitution. It instructs the State to provide that: "The strength and health of workmen, men and women, and the tender years of children are not sacrificed, and that citizens are not forced by economic need into avocations unbefitting their sex or age." Even though DPSPs cannot be made enforceable at the court, they are ethical guidelines on which legislative and policy reforms are established for social justice and welfare.<sup>14</sup>

#### Protection of Prisoner Women Under Article 39(e) Safe

##### and Humane Working Conditions in Prisons:

Most of the women prisoners are forced to work in prisons (e.g., tailoring, handicrafts, kitchen). The State must make sure that prison work is voluntary, reasonably paid, and non-exploitative for women prisoners. No forced labor or

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<sup>14</sup> India Const. art. 39(e) (Directive Principles of State Policy, Part IV)



(requiring the State to see that the health and strength of workers and children are not being overstrained, and that citizens are not forced by economic necessity into occupations unsuitable to them)



dangerous labor must be allotted to women, particularly pregnant or old prisoners.

### **Physical and Health Strength of Prisoner Women**

Article 39(e) requires women's physical and mental well-being not to be injured by poor conditions in prisons. Prisons must offer wholesome food, sanitation facilities, and sanitary napkins to maintain the health and dignity of prisoners' women. In *Sheela Barse v. State of Maharashtra* (1983), the Supreme Court particularly observed that separate medical facilities as well as protection from custodial violence were essential.<sup>15</sup>

Protection of Children Who Are with Imprisoned Mothers under Article 39(e)

### **Prevention of Abuse of Tender-Aged Children:**

The children of imprisoned mothers must not suffer anything due to the imprisonment of their mother. Prisons must provide the children (typically children up to age 6 years) with, good food and medical attention, Proper accommodation and hygiene. Education and recreation.

### **State Responsibility in Child Welfare**

Article 39(e) is consistent with the Juvenile Justice (Care and Protection of Children) Act, 2015, which enjoins the State to safeguard children from exploitation, abuse, and neglect. In *R.D. Upadhyay v. State of A.P.* (2006), the Supreme Court was of the view that children behind bars should not be punished due to the reasons of poor facilities and should be given a child-friendly environment.

### **Legislative and Policy Initiatives Under Article 39(e)**

To effectuate the provisions of Article 39(e), there are several laws and policies safeguarding the prisoners and their offspring, including:

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<sup>15</sup> *Sheela Barse v. State of Maharashtra*, (1983) 2 S.C.C. 96 (India) (highlighting the urgency for special medical facilities for women prisoners and protection against custodial violence).

The Prisons Act, 1894 & Model Prison Manual, 2016 – Prescribes norms regarding the humane treatment of prisoners with special facilities for women. The Maternity Benefits Act, 1961 – Extends proper pre-natal and post-natal treatment to pregnant female prisoners. The National Policy for Women, 2016, Emphasizes gender-sensitive prison reform.

#### **(e) Protection Under Article 39(f) of the Indian Constitution**

##### **Understanding Article 39(f)**

Article 39(f) is part of the Directive Principles of State Policy (DPSP) in Part IV of the Indian Constitution. It directs the State to ensure: "That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment." <sup>16</sup>Although DPSPs are not enforceable in courts, they serve as guiding principles for laws and policies aimed at child welfare and the protection of vulnerable groups like incarcerated women and their children.

##### **Protection for Incarcerated Women Under Article 39(f)**

#### **(f) Protection Under Article 45 of the Indian Constitution**

Understanding Article 45: Article 45, part of the Directive Principles of State Policy (DPSP) under Part IV of the Indian Constitution, states: "The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years." This provision recognizes that early childhood development, including nutrition, healthcare, and education, is crucial for a child's overall well-being. Although not enforceable by courts, it serves as a guiding principle for State policies related to child welfare.

##### **Care of Children Living with Imprisoned Mothers under Article 45**

Children aged up to six years are generally allowed to go with their imprisoned mothers to prison. Article 45 instructs the State to arrange for their well-being by ensuring:

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<sup>16</sup> India Const. art. 39(f) (Directive Principles of State Policy, Part IV)

## **A. Early Childhood Care & Development**

### **Healthy Food & Healthcare**

Because prisons are not meant for kids, certain special arrangements have to be made to suit their dietary and health requirements. In *R.D. Upadhyay v. State of A.P.* (2006), the Supreme Court ordered prison children to offer well-nourished diet plans, sufficient health facilities, and immunization. Safe & Child-Friendly Environment

Prisons should also possess nursery wings, playgrounds, and sanitary living areas separately to ensure a normal childhood for children. The Model Prison Manual, 2016, provides for special facilities for pregnant females and children residing in prisons, such as separate crèche facilities.

## **B. Right to Early Childhood Education**

### **Access to Pre-School Education**

The Right of Children to Free and Compulsory Education (RTE) Act, 2009<sup>17</sup>, according to Article 45, provides for free and compulsory education for all children, including prison children. Such children's early education must be organized by the prison administration in collaboration with Anganwadi centers or NGOs.

### **Alternative Care & Schooling for Older Children**

Children older than six years need to be given education outside the prison or be sent to childcare centers where they can get proper education. The Juvenile Justice (Care and Protection of Children) Act, 2015 compels children in distress situations, including children of imprisoned mothers, to give them the right to education and a healthy upbringing.

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<sup>17</sup> Right of Children to Free and Compulsory Education Act, No. 35 of 2009, India Code (2009).

### Judicial Support & Legislative Steps Under Article 45:

Unni Krishnan v. State of Andhra Pradesh (1993): Established education as a right, leading to Article 21A (Right to Education).<sup>18</sup>

R.D. Upadhyay v. State of A.P. (2006): Set the standards for childcare centers in prisons, with early education and child-friendly facilities being given priority.

National Policy on Early Childhood Care & Education (ECCE), 2013: Focuses on universal provision of quality early childhood education with emphasis on those children who are in adversity.

### Challenges & The Way Forward

Even though the cover-up has been under Article 45, the following challenges still prevail: Lack of proper implementation of the early childhood education policy for prisoners. Overcrowding & substandard prison conditions impinge negatively upon children's development. Poor access to Anganwadi services & early childhood education programmed in prisons.

Article 45 is the key to attaining early childhood care and education for children of imprisoned mothers. Effective implementation of prison reforms, enhanced coordination with non-governmental organizations, and enhanced access to pre-school education are the standard for attaining these children's rights and attaining their overall development.

## **2.3 THEORETICAL APPROACHES**

### **1. BEST INTEREST OF THE CHILD DOCTRINE FOR CHILDREN LIVING WITH INCARCERATED MOTHER**

The "Best Interest of the Child" (BIC) principle is a basic principle of child rights law, where all decisions having an impact on a child are taken in the interest of their welfare, development, and protection<sup>19</sup>. Such a doctrine is

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<sup>18</sup> Unni Krishnan, J.P. v. State of A.P., (1993) 1 S.C.C. 645 (India) (upholding the right to education as part of the right of life under Article 21 and the considerations on which subsequent legislation for Article 21A followed).



<sup>19</sup> Convention on the Rights of the Child, art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3 (requiring that "in all actions concerning children, the best interests of the child shall be a primary consideration")



accepted internationally under the UN Convention on the Rights of the Child (UNCRC) and has been used in Indian court cases.

### Concept of Best Interest of the Child Doctrine

#### A. Definition & Core Principles

The Best Interest of the Child (BIC) principle seeks to provide children with an environment that will promote their physical, emotional, and psychological development.

Some of the most important features of the BIC principle are: Protection from harm (physical, mental, and emotional). Provision of a caring environment (proper healthcare, education, and emotional support). Care in the family in stability rather than institutionalization, except in cases where removal is required for the protection of the child.

#### B. Legal Foundations of the BIC Doctrine

The BIC principle is embodied in international and Indian law that safeguards children's rights, most notably children who are in vulnerable situations, i.e., criminal mothers' children.

#### Best Interest of the Child under the UNCRC

The United Nations Convention on the Rights of the Child (UNCRC, 1989) is a highly ratified convention that frames children's rights, with their best interest in mind specifically.

#### Key UNCRC Provisions Supporting the BIC Doctrine

**Article 3:** Mandates that the best interest of the child must be a principle that guides in all matters related to children.

**Article 9:** Stresses that children must not be separated from their parents except when in the best interest of the child.

**Article 20:** Demands that the State provide alternative care (e.g., foster care or adoption) if the child cannot stay with his/her parents.

**Article 37(c)** Requires children deprived of liberty to be treated with dignity and imprisoned separately from adults, in a reminder of the requirement for special treatment of children residing in prisons.

#### UN Guidelines for Children whose Parents are in Prison

The UN Committee on the Rights of the Child (General Comment No. 14, 2013) underscores that in all criminal justice proceedings against parents, the best interest of the child must be taken into account and accorded priority.

The "Bangkok Rules" (UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, 2010) suggest that children of imprisoned mothers must never be treated as prisoners and must be given special care.

These rules oblige India and other signatory nations to ensure that children of imprisoned mothers get care, education, and protection from harm.

#### Best Interest of the Child in Indian Jurisprudence

##### A. Constitutional Protection of Children with Imprisoned Mothers

**Article 14:** Guarantees equality before the law, where children of jailed mothers are not discriminated against.

**Article 15(3):** Permits the State to make special provisions for children.

**Article 21:** Safeguards the right to life and dignity, including humane treatment of jailed children.

**Article 39(e) & (f):** Forcibly protects children against neglect, abuse, and exploitation, as per the BIC doctrine.

**Article 45 & 21A:** Provides early childhood care and free education to children, including prisoners.

##### B. Judicial Precedents Upholding the BIC Doctrine

The best interest of the child has always been maintained by the Indian courts, especially for the children residing with their mothers in prisons. R.D.

Upadhyay v. State of Andhra Pradesh (2006). Agreed to the fact that children who reside in prison are not offenders and should receive appropriate nutrition, medication, and education. Ordered to shift children above the age of six to childcare homes or alternative care settings.

Sheela Barse v. Union of India (1986) Spoke about the inhuman handling of women prisoners and emphasized child-friendly prison life for jailed mothers.

Francis Coralie Mullin v. The Administrator, Delhi (1981) Extended the ambit of Article 21 to include the right to live with dignity so that children in prisons are shielded and provided with care.<sup>20</sup>

### Implementation of the BIC Doctrine in India

A. Legal and Policy Framework for the Protection of Prison Mothers' Children. There are a number of policies and legislations in India that adopt the BIC doctrine:

Juvenile Justice (Care and Protection of Children) Act, 2015: Deems children of prison parents as "children in need of care and protection" and makes provisions for alternative care and rehabilitation. Model Prison Manual, 2016. Requires prisons to have special children's facilities such as nurseries, medical facilities, and playgrounds. National Policy for Children, 2013 Complies with the spirit of the UNCRC and child-friendliness in the justice delivery process. Right to Education (RTE) Act, 2009, Ensures free and compulsory education for children between 6-14 years, including the children of jail inmates.

## **2. HUMAN RIGHTS-BASES APPROACH TO PRISONER'S CHILDREN**

A human rights-based approach (HRBA) guarantees that children of the incarcerated are treated with dignity, equality, and protection and are not penalized for the incarceration of their parents. The approach is consistent with

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<sup>20</sup> Francis Coralie Mullin v. Admin., Union Territory of Delhi, (1981) 1 S.C.C. 608 (India)

international human rights mechanisms and is rooted in the child's right to survival, development, and participation in society.

### 1. Understanding the Human Rights-Based Approach (HRBA) The

HRBA model is established on the grounds of:

**Non-discrimination:** Incarceration of a child's parent must not lead to discrimination against them. **Best Interest of the Child:** The decision must be for the benefit of the child (UNCRC, Article 3). **Right to Development:** Provision of education, health, and psychological care (UNCRC, Articles 6 & 27). **State Responsibility:** States need to provide special protection measures for such children. Rather than viewing such children as extensions of the incarcerated parent, a HRBA sees them as separate rights-holders to:

A secure and supportive environment. Equal opportunities. Freedom from discrimination and stigma

### 2. International Human Rights Instrumentations Safeguarding Prisoners' Children

#### A. United Nations Convention on the Rights of the Child (UNCRC, 1989)

The UNCRC is the most comprehensive international treaty safeguarding children's rights that specifically focuses on their protection when their parents are incarcerated:

**Article 2:** Mandates that children should not be discriminated against based on the status of their parents.

**Article 3:** Mandates consideration of the best interest of the child when making legal and administrative decisions.

**Article 9:** Mandates that children should not be removed from parents except when the welfare of the child requires it.

**Article 20:** Mandates special care and alternative care in the event that the child is removed from the parent.

#### B. UN Rules & Guidelines on Prisoners' Children

### **UN Bangkok Rules (2010):**

Recommend non-custodial care of pregnant women and new mothers. Provide child care centers and preserve family connections in prisons.<sup>21</sup> **UN Nelson**

### **Mandela Rules (2015):**

Emphasize humane prison life and the right of families to continue with contact with individuals in prison.<sup>22</sup>

### **UN Havana Rules (1990):**

Emphasize special protection of children of detained parents so that they do not miss out on education and health care.<sup>23</sup>

## **3. Human Rights of Prisoners' Children in the Indian Context**

### **A. Constitutional protection**

India's Constitution safeguards children's rights with special emphasis on safeguarding and caring for them:

**Article 14** – Right of equality and non-discrimination.

**Article 15(3)** – Special provisions by the State for children's welfare.

**Article 21** – Right to life and dignity, humane treatment of children in prison.

**Article 39(e) & (f)** – Safeguarding against exploitation and neglect.

**Article 45 & 21A** – Right to education, granting access to educational facilities.

### **B. Legal Protection in India**

There are certain policies and laws that provide a human rights-based framework for the children of prisoners:

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<sup>21</sup> U.N. Office on Drugs & Crime, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), U.N. Doc. A/RES/65/229 (Dec. 21, 2010).

<sup>22</sup> U.N. Office on Drugs & Crime, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), U.N. Doc.



A/RES/70/175 (Jan. 8, 2016).

<sup>23</sup> U.N. General Assembly, United Nations Rules for the Protection of  
Juveniles Deprived of their Liberty (Havana Rules), U.N. Doc.  
A/RES/45/113 (Dec. 14, 1990).



Juvenile Justice (Care and Protection of Children) Act, 2015

Views the prisoners' children as children in care and protection.

Essays alternative care such as child welfare homes, adoption, or foster care.

Model Prison Manual, 2016

Requires prisons to build crèches, playparks, and child-friendly environment. Advises keeping the children with their mothers until the age of 6 years.

Right to Education (RTE) Act, 2009

Guarantees free and compulsory education to all children, including prisoners' children.

#### C. Indian Supreme Court Judgments Upholding HRBA

R.D. Upadhyay v. State of A.P. (2006)

Ordered that the prison-born children should not be considered as prisoners. Ordered separate arrangements, proper diet, and education to jail children.

Sheela Barse v. Union of India (1986), Demanded humane treatment of women prisoners, ensuring child-friendly environments.

Gaurav Jain v. Union of India (1997), Stressed rehabilitation and non-discrimination for sex workers' children and prisoners' children.

#### 4. Main Concerns of Prisoners' Children from a Human Rights Perspective

Even with legal protection, children of imprisoned mothers are subjected to various human rights abuses:

##### A. Denial of the Right to Family Life & Emotional Support

Children experience emotional trauma from being separated from their mother. No contact with family policies cause emotional trauma.

HRBA calls for regular visitation rights, special parental programs, and alternative care when necessary.

## B. Denial of the Right to Education

Most of the children are not receiving quality education within prisons.

HRBA mandates that the State should guarantee access to good quality education either within prison or outside it.

## C. Right to Health & Nutrition violation

Children become malnourished, lack appropriate healthcare, and are housed in unhygienic prisons.

HRBA mandates regular health check-ups, vaccination, and quality diets.

## D. Right to Protection from Stigma & Discrimination violation

Society discriminates against prisoners' children, which reflects in their future opportunities.

HRBA advocates social reintegration initiatives so that they are not excluded.

## 5. HRBA Strengthening Recommendations for Prisoners' Children

### A. Policy Reforms to Prison Life

- Establish child-friendly prisons (crèches, education centers, playrooms).
- Provide adequate nutrition, healthcare, and psychological counseling.
- Arrange alternative care for children above 6 years.

### B. Judicial & Legal Reforms

- Advocate non-custodial sentencing for mothers with young children.
- Enhance the application of bail and probation for pregnant women and mothers.
- Expand legal assistance to imprisoned mothers, protecting children's rights.

### C. Education & Social Reintegration

- Offer scholarships and social welfare programs for prisoners' children.
- Expand community-based care and foster care initiatives.

- Enhance public awareness to eliminate stigma and discrimination.

#### D. Strengthening International Commitments

- Enact UN Bangkok Rules & Mandela Rules in Indian prisons.
- Enhance monitoring and reporting systems to ascertain compliance with UNCRC.

A human rights framework for children of prisoners relocates the focus from punishment to protection, guaranteeing their right to equal and dignified life. With child-friendly prison reforms, alternative care models, and legal protection, India can ward off discrimination, provide protection to rights, and secure a better future for these vulnerable children.

The State, the judiciary, and civil society need to act in unison to ensure that a child is not victimized because of the parent's imprisonment, upholding India's commitment to human rights and child welfare.

### 2(b) FEMINIST LEGAL THEORY AND THE GENDER IMPACT OF INCARCERATION ON MOTHERS AND THEIR CHILDREN

Feminist theory of law resists how law and legal institutions reinforce gendered inequalities, especially in imprisonment, where women most disproportionately endure the full brunt of the harm. Imprisonment of mothers is gendered because women offenders have specific hurdles to overcome compared to male offenders, and the children of these women often suffer the silent impact of the criminal justice system. This convergence of motherhood and gender and incarceration necessitates feminist critical analysis of the ways that law and policy shortchange the special needs of both women behind bars and their children.

#### Feminist Legal Theory and the Criminalization of Women

Feminist theorists of law are of the view that criminal legislation is directly formed by patriarch principles, which overrule structural oppression resulting in female imprisonment. Females who have committed crimes were historically criminalized for crimes derived from socio-economic vulnerabilities, intimate partner violence, and institutional suppression. Most incarcerated women have

downtrodden profiles and have beforehand experienced poverty, abuse, and trauma but receive treatment from the justice system as individual criminals rather than victims of societal disintegration.<sup>24</sup>

For instance, the overwhelming majority of women are jailed for non- violent crimes, crime against drugs or the economy—and most often connected with their work as caregivers and money providers. Women's offenses, economic need, drug use induced by violence, or coercion by violent men, are obscured from the law. This gendered criminal law with its long-reaching implications has long-reaching impacts both on women inside prison and on their children.

Incarcerated women have more at stake than men because they are the primary caregivers. The criminal justice system presumes that men have outside family support when incarcerated, but women do not. Thus, when fathers are incarcerated, their children typically stay with their mothers or extended families. But when mothers are imprisoned, their children experience displacement, foster care, or institutionalization and, subsequently, bear long- term psychological and emotional costs. One of the main feminist critiques of imprisonment is that the prison system is masculine in form and does not consider women's particular needs, especially mothers. Prisons are not equipped with proper maternal healthcare, mental health facilities, and gender-specific rehabilitation programs. Infant and pregnancy mothers receive little medical attention and nutrition, and resources that enable them to sustain relationships with their children are also lacking. Gendered experience is denied by the law code, and structural harm leads to a cycle against both the imprisoned mother and her family. Feminist thinkers have also placed emphasis on the double punishment of the jailed mothers.

#### Impact on Children of Jailed Mothers

Feminist theory of law puts in perspective that children of jailed mothers are also victims of systematic injustice for no fault of their own. The prison system

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<sup>24</sup> Carol Smart, *Feminism and the Power of Law* (1989); Hilary Allen, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions* (1987)

pays no heed to their needs and rights and perceives them as collateral damage and not as human beings who have constitutional and human rights.

Kids with mothers in jail are likely to experience emotional turmoil, psychological harm, and financial distress. They are forced apart from their mothers, leading to abandonment, distress, and anxiety. Research indicates that these children have a higher likelihood of academic failure, misbehavior, and future encounters with the criminal justice system, resulting in an intergenerational pattern of exclusion.

Feminist critique is also critical of the institutional treatment of arrested mothers' children, i.e., institutionalizing them in foster care and state institutions. Rather than offering community-based support systems, social welfare programs, or alternatives to detention for mothers, legal policy prefers to break up the parent-child relationship and put the children in impersonal, under-resourced state custody. This treatment ignores the significance of care from mothers and the well-being of children by being patriarchal in nature<sup>25</sup>.

#### Feminist Alternatives: Reforming the System for Women and Their Children

Feminist legal theory calls for structural reform of the legal system to correct the gendered impact of imprisonment more comprehensively. The strongest recommendation is decreasing the incarceration of women in general, especially for non-violent offenses. Rather than punitive sentencing, a feminist perspective advocates alternative sentencing, community rehabilitation, and non-custodial sentences for mothers like: Diversion programs: Rather than jailing women for small crimes, the state must spend money on mental health care, drug treatment, and economic assistance programs that attack the cause of criminality. Community-based sentencing: Home confinement, probation, and community work should be the first choice for young mothers. Mother-and-child prison reforms: Prisons must offer child-sensitive environments, extended visiting

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<sup>25</sup> Julia Sudbury, *Global Lockdown: Race, Gender, and the Prison-Industrial Complex* 63–89 (2005)



rights, and maternal special health care programmed. Support at release: At release, women require housing, job opportunities, and reinsertion programmed so they do not recidivate and can reunite with their children. A feminist legal system places a high level of emphasis on restorative rather than punitive justice. Rather than the criminal processing of women in jail who require punishment, restorative justice measures include a strategy of rehabilitation, conciliation, and social reinsertion.

A feminist critique of imprisonment depicts that the criminal justice system discriminates against women and their children on a gender basis. The law still lingers in the patriarchal sphere and is unconcerned about gendered nature in crime, care, and punishment. Incarceration of women is not a matter of criminal law but also a social justice matter in the sense that it indicates the failure of the legal system to observe and respond to gendered inequality, structural poverty, and the effects of trauma on women's lives. For there to be a true just legal system, gender-sensitive reforms have to be made that decrease the imprisonment of mothers and safeguard the rights of their children. In adopting a feminist, human rights approach, legal systems can seek to interrupt cycles of disadvantage and make women and children not victims once again of law.<sup>26</sup>

### **2.3 INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

#### **(a) The UNCRC and Its Applicability in India to Children of Imprisoned Mothers**

The United Nations Convention on the Rights of the Child (UNCRC) is a path-breaking human rights convention that puts children as independent rights-holders. Being a signatory to the UNCRC, India legally and morally binds itself to extending the care, protection, and dignity to all children, including those who live with or are separated from their imprisoned mothers. The principles of non-discrimination, best interests of the child, right to survival and development, and participation are the pillars that create the base of child

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<sup>26</sup> Elizabeth Comeback, *Women in Trouble: Connecting Women's Law Violations to Their Histories of Abuse* (1996)

welfare policy in India. However, despite the various legal safeguards, the implementation of these rules for children whose mothers are inmates is a delicate issue.

In India, the criminal justice system has never acknowledged the specific vulnerabilities of children whose mothers are incarcerated. Most such children live in prisons under deplorable conditions or get displaced, institutionalized, and stigmatized. UNCRC offers a template to prevent such children from being treated as collateral damage but as individuals with specific rights and requirements.

The best interests of the child (Article 3 of the UNCRC<sup>27</sup>) should be the criteria to decide whether the child stays with the convicted mother or is left in alternative care. Indian prison officials and courts, nevertheless, do not accord priority to this norm. In most cases, children are housed in prisons despite the mandated age limitations due to an absence of alternative care systems. Other children are removed by force from their mothers with no support system in place, resulting in emotional damage and insecurity. This indicates an absence of a child-centered focus in prison and social welfare policy. The UNCRC mandates that whenever decisions regarding children are made, they must be made with an eye towards their physical, emotional, and psychological well-being, which is never systematically practiced within India's criminal justice system. India's adoption of the right to survival and development (Article 6) of the UNCRC is ensured through various country policies, but children in prisons still lack adequate healthcare, nutritious food, and education.

Though Indian law, such as the Model Prison Manual, 2016, makes provisions for crèches and elementary education for children residing in prisons, enforcement is uneven across states. Most prison centers are congested and do not have child-friendly areas, contravening the UNCRC's vision of a safe environment for children. Additionally, children left behind by their imprisoned mothers are not given much state attention, and most of them end up in poverty, on the streets, or in institutions, contrary to their right to proper development

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<sup>27</sup> Convention on the Rights of the Child art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3

and well-being. Article 9, which guarantees the right to family life and care by the parents, is most important in the Indian context because close family relationships are the foundation of child development.

The UNCRC stipulates that children are not to be removed from their parents unless where it is in their best interest, and even when it is, states should ensure periodic contact between child and parent. In India, prisoners' children are seldom allowed visitation rights by virtue of bureaucratic obstacles, unawareness, and financial restrictions. The majority of children cannot see their mothers in jail, and it results in emotional alienation and psychological trauma. Prison policies hardly allow normal and effective contact despite the UNCRC strongly laying emphasis on preserving parent-child relationships.

The conditions in Indian prisons where children reside with their mother prisoners are generally sub-standard under Article 37 of UNCRC,<sup>28</sup> which requires that children should not be treated inhumanely. While Indian law permits mothers to keep children with them in prison until a certain age (usually six years), the prisons do not have adequate health care facilities, food, and early childhood education centers. Most prisons do not make special eating arrangements for children and pregnant women, resulting in malnutrition and retardation.

Both the Bangkok Rules and the UNCRC promote non-custodial options for women with babies, but Indian courts hardly consider community-based sentencing, probation, or rehabilitation programs as a substitute for prison. Rather, most of the women are sentenced to harsh sentences for comparatively minor and non-violent crimes, leading them to create unnecessary disruption in their children's lives. Though Indian courts have granted bail or suspended sentence to pregnant women and mothers from time to time, this is not a uniform practice, and the majority of women, especially those who belong to marginalized communities, are not privileged in this way. The UNCRC also

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<sup>28</sup> Convention on the Rights of the Child art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3 (banning torture or cruel, inhuman, or degrading treatment or punishment of children and mandating humane treatment and respect for the

dignity of children deprived of liberty).



ensures the right to education (Article 28), but children of prison mothers are usually denied good education.

The absence of regular prison policies, alternative sentencing systems, and child-sensitive social welfare schemes deprives these children of exercising their full rights. Providing a guarantee for strict enforcement of the principles of the UNCRC through legal reforms, enhanced prison infrastructure, and non-custodial sentencing systems would significantly enhance the lives of these children. Perhaps more than anything, an effort has to be made to shift societal opinion to and fro thinking about the prisoners' children as "the extension of the parent's offending" into understanding them as rights-holders and worthy, equally, of protection, care, and opportunities.

#### **(b) The Bangkok Rules and Their Relevance in India**

The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders, also referred to as the Bangkok Rules, were adopted by the United Nations General Assembly in 2010.<sup>29</sup> The rules acknowledge the gender-related needs of women in the criminal justice system and set guidelines for the treatment of women in prison and for alternatives to imprisonment. The Bangkok Rules bridge an essential gap in international human rights law because they aim at the specific needs of vulnerable women prisoners, e.g., pregnant women, mothers of small children, or sole caregivers.

To India, the Bangkok Rules are of specific relevance considering the rise in incarceration of female prisoners who used to be commonly imprisoned on trivial, non-violent offenses. Indian prison women inmates suffer from institutional deprivation, over-population, and failure to access health services and for their children as well. The criminal justice system has previously remained masculine and not incorporated gendered impact of imprisonment into

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<sup>29</sup> U.N. General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), G.A. Res. 65/229, U.N. Doc. A/RES/65/229 (Dec. 21, 2010)

its account. The Bangkok Rules have a human rights perspective under which India can reform its penal system and criminal justice policy for the enhancement of protection to women and children. A very basic aspect of the Bangkok Rules is that they are interested in alternatives to the custody of women, i.e., pregnant or mothering women who have dependent children. Bangkok Rule 64 specifies the use of alternatives to imprisonment, for example, community service, probation, or restorative justice measures, for women who are convicted of a non-violent crime

Majority of India's women prisons are plagued by issues of unhygienic environment, improper medical care, and inadequate legal aid services. Bangkok Rules place additional emphasis on gender-specific medical care services such as access to gynecological care, mental health guidance, and antenatal and postnatal care. Although some of these have been included in India's Model Prison Manual, 2016, implementation is unevenly distributed across states. Most prisons do not have proper sanitary facilities, proper feeding for pregnant women, and medical care, putting the health of women in prison at risk.

In India, visitation policies are generally restrictive, with children encountering bureaucratic hurdles, long distances to travel, and restricted visiting hours when attempting to visit their incarcerated mothers. The Bangkok Rules highlight the value of regular and substantial contact between children and mothers, including extended visits and the application of new communication technologies. Indian prisons seldom allow video calls or other alternative means of communication, thereby further destabilizing mother-child relationships. Bangkok Rules also take into account rehabilitation and reintegration of female offenders, something that has remained a recurring issue in India.

Most of the female inmates, especially those from vulnerable sections, encounter difficulties in rehabilitation after release due to stigma, economic deprivation, and social isolation. The Bangkok Rules emphasize the need for education and vocational training courses so that women become economically self-reliant at the time of release. Though some Indian prisons have brought in



skill development schemes, they are in a scattered and poorly funded manner. There is also a lack of post-release care institutions, making the majority of women susceptible to being unemployed, destitute, and criminals. The introduction of the Bangkok Rules into India's criminal justice is not just needed in terms of legal reforms but also a mind-set shift—away from the punitive system to a rehabilitation and gender-sensitive one.

### (c) The Nelson Mandela Rules and Their Relevance in India

United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), otherwise also referred to as Nelson Mandela Rules, were accepted in 2015 to establish a worldwide policy for treatment with humanity and dignity<sup>30</sup>. They realize that even while the prisoners lose their freedom, they need never surrender their fundamental human rights, dignity, and safeguard against ill-treatment. The Mandela Rules apply to all prisoners, female or male, of all ages and for any offence, and therefore they are most significant in ensuring humane treatment of vulnerable groups such as women, children, and the aged.

In India, where the issue of prison overcrowding, unsanitary conditions, inadequate health care, and absence of legal counsel are prevalent in the country, the Mandela Rules provide a model for change. India's criminal justice system too frequently does not acknowledge that prisoners do have basic rights even if they are incarcerated. The Mandela Rules focus on the ban on torture, medical care, and access to rehabilitation programs, all of which are issues in Indian prisons.

One of the key principles in the Mandela Rules is the acknowledgment of the inherent dignity of prisoners and protection against inhuman, degrading, or cruel treatment. In India, custodial violence, harassment of women prisoners sexually, and excessive use of solitary confinement remain rampant. The Indian Supreme Court and National Human Rights Commission (NHRC) have often expressed concern about police and prison violence, yet protection enforcement

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<sup>30</sup> U.N. General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175, U.N. Doc. A/RES/70/175 (Jan. 8, 2016).

to prisoners is frail<sup>31</sup>. The Mandela Rules emphasize punishment should not amount to cruel, inhuman, or degrading treatment, yet in India they are practiced by continuing to implement extended solitary confinement and denial of basic amenities as punishment, defying international human rights norms.

The Mandela Rules also bring to light the right to health care within prisons, and it is argued that prisoners must be offered medical treatment comparable in quality to the general population. Indian prisons, nonetheless, have seriously lacking medical personnel, specialized women and geriatric prisoner treatment, and inadequate mental health facilities. Pregnant women, lactating women, and prison children are particularly vulnerable to malnutrition, absence of prenatal and postnatal care, and poor sanitation facilities. Most Indian prisons do not have independent women's medical units, thus having to be dependent on male-dominated prison health systems, which are often intimidating and ineffective. Incorporating the Mandela Rules into Indian prison policies, the state can enhance healthcare facilities, provide gender-sensitive medical care, and provide mental health treatment to the convicts.

The other striking feature of the Mandela Rules is that they place enormous emphasis on rehabilitation and reintegration of prisoners into society. Indian prisons are usually overcrowded and more punitive than reformatory institutions. Vocational training and education are available in some prisons, but these are not uniform and not equally available everywhere. It is difficult for many prisoners, especially women, to reintegrate socially when they are released from prison, with stigma, unemployment, and absence of social support systems. The Mandela Rules encourage vocational training, education, and psychological counseling to enable prisoners to become productive citizens after release from prison, an aspect where India still falls behind in systematic application.

Overcrowding is one of the most serious issues in Indian prisons, which goes against the provision of the Mandela Rules that the conditions of prisoners will not equate to inhumane treatment. Indian jails are usually functioning at

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<sup>31</sup> D.K. Basu v. State of W.B., (1997) 1 S.C.C. 416 (India)

150-200% capacity, which also results in unhygienic jail conditions, heightened possibility of violence, and disease spread. Alternative sentences such as probation, parole, and community-based rehabilitation are proposed by the Mandela Rules as a way to curb unnecessary imprisonment.

The Mandela Rules also identify the particular requirements of vulnerable groups of prisoners such as women, children, older prisoners, and persons with disabilities. Indian prisons are not yet prepared to respond to these special groups<sup>32</sup>. Pregnant and lactating women prisoners are especially prone to deprivations due to the absence of special sanitary facilities, unwholesome eating habits, and lack of childcare facilities.

One of the most important aspects of the Mandela Rules is being able to sustain family connections. The rules state that prisoners are to be granted regular contact with their families through visits and letters. In India, though, prison visiting norms remain strict, particularly for female prisoners. Most imprisoned mothers are unable to keep in touch with their children because of administrative obstacles, cost factors, and stigma from having a parent incarcerated. The Mandela Rules also promote other forms of communication such as video calls, which, if well established in India, would go a long way in reducing the emotional load on the prisoners as well as their families.

Although some efforts in this direction have been made in India, for instance, the Model Prison Manual, 2016, which draws on some of the provisions of the Mandela Rules, there is a vast gap between policy and practice. The NCRB and judgments of courts have also spotlighted prison overcrowding, violence in custody, and denial of medical aid, but things take time to change at the system level.<sup>33</sup> For India to implement the Mandela Rules fully in its penal system, the nation needs to shift through structural changes involving:

- Confronting prison overcrowding with bail reforms and non-custodial sentencing
- Providing humane treatment and protection against custodial violence
- Enhancement of prison health centres, particularly among children and women

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<sup>32</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175, Rules 2 & 5, U.N. Doc. A/RES/70/175 (Jan. 8, 2016). <sup>33</sup> Nat'l Crime Recs. Bureau, Prison Statistics India 2021 (2022), <https://ncrb.gov.in>

- Reintegration and rehabilitation of inmates
- Policing policies of sustained family relationships and contact with the children

Effectively, the Mandela Rules are a human rights framework of prison administration, challenging nations to perceive prisoners not only as offenders but as human persons with dignity and rights. To India, adopting these principles more extensively would be to transition from a retributive to a reformatory imprisonment culture, ensuring that prisoners, especially vulnerable categories such as women and children, are accorded justice, dignity, and opportunities to shape a positive future.



### **CHAPTER III**

#### **CONSTITUTIONAL AND LEGAL FRAMEWORK IN INDIA**

##### **3.1 CONSTITUTIONAL AND LEGAL FRAMEWORK IN INDIA: PROTECTION OF CHILDREN'S RIGHT**

Indian Constitution guarantees fundamental rights and directive principles in the interest of preserving and promoting welfare of children. There are variegated Constitutional provisions which help provide proper care, education, health, and protection to children with specific focal areas being the ones who remain in situations of risk, such as remaining along with their arresting mothers. Judiciary has also positively been involved with interpreting and upholding enforcement of such rights.

##### **1. Article 21 – Right to Life and Personal Liberty**

###### **Text of Article 21:**

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

###### **Judicial Interpretation and Protection of Children's Rights**

The Supreme Court, over a period of time, has broadened the scope of Article 21 to cover a range of rights vital to children's survival, development, and dignity. The Court has been interpreting "right to life" to encompass right to live in dignity, right to education, right to medical care, and freedom from exploitation.<sup>34</sup> *Gaurav Jain v. Union of India* (1997) – The Supreme Court held that the children of vulnerable groups like prostitutes and prison convicts do not have to suffer because of their parent's plight. The Court emphasized the obligation of the State to give the children rehabilitation, education, and protection. *Unnikrishnan v. State of Andhra Pradesh* (1993) – Supreme Court

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<sup>34</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608 (India)

held that education comes under Article 21, which eventually resulted in the addition of Article 21A (Right of Education) in 2002. *Francis Coralie Mullin v. Union Territory of Delhi* (1981) – Supreme Court held that right to live with dignity as a human being is in Article 21, and this applies to prisoners and children of prisoners alike to provide humane treatment while in custody. *R.D. Upadhyay v. State of A.P.* (2006) – The Supreme Court issued guidelines regarding children who stay with imprisoned mothers so that such jail children receive basic amenities, nutrition, education, and health facilities. **Relevance for Children of Incarcerated Mothers**

Children in jail with their mothers should not be treated as prisoners and should receive a child-friendly environment, a balanced diet, education, and medical care. Right to the rehabilitation and return of children of incarcerated women is also guaranteed through Article 21.

## **2. Article 39 – Directive Principles of State Policy (DPSP) for Child Welfare**

Article 39 of the Indian Constitution is one of the Directive Principles of State Policy (DPSP) and requires the State to protect and develop the children.

**Article 39(e):** Requires the State to ensure that the children are not compelled to perform labor or employment prejudicial to their health or efficiency.

**Article 39(f):** Demands that the State provide for children to develop in a healthy way without being exploited and abused, and also gain from opportunities for development with dignity.

### **Judicial Interpretation and Protection of Children's Rights**

**M.C. Mehta v. State of Tamil Nadu (1996)** – The Supreme Court ruled that children must not be used in hazardous work and instructed the government to offer alternative education and compensation to victimized children<sup>35</sup>.

**Sheela Barse v. Union of India (1986)** – The Court stressed the peculiar vulnerability of women prisoners and their children and directed the

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<sup>35</sup> *M.C. Mehta v. State of Tamil Nadu*, (1996) 6 S.C.C. 756



government to provide sufficient facilities, such as separate housing and health care, to children who live in prisons.

**Laxmi Kant Pandey v. Union of India (1984)** – The Supreme Court set guidelines on adoption to put an end to child trafficking and protect the interests of children under Article 39(f).

#### Relevance to Children of Incarcerated Mothers

It is the responsibility of the State to ensure protection, care, and education to the children who are dwelling in prison with their mothers so that they do not become a victim of inhumane treatment or mental harm. Their right to grow in a healthy way cannot be taken away from them within the prison system.

#### 3. Article 45 – Right to Early Childhood Care and Education

Text of Article 45:

The State will strive to provide early childhood education and care to all children until the age of six.

#### Judicial Interpretation and Protection of Children's Rights

**Mohini Jain v. State of Karnataka (1992)** – The Supreme Court held that education is a fundamental right under Article 21 reaffirming early childhood care and education as necessary. **Unnikrishnan v. State of Andhra Pradesh (1993)** – The case resulted in Article 21A (Right to Education) being incorporated into the Constitution, which acknowledged education as the fundamental right of a child for 6- to 14-year-olds.

#### Relevance of Imprisonment of Mothers to Children

The children living inside prisons need to be given education and care through early, childhood schooling, required to develop cognitively as well as socially. Proper education and crèche facilities have to be made available inside the prison or proper education outside prisons is to be made available by the government.

#### 4. Article 47 – Duty of State Towards Public Health

##### Text of Article 47

"The State shall consider the enhancement of the nutrition level and standard of living of its people and public health as among its earliest priorities." This article compels the State to act towards better nutrition, public health, and living standards, particularly for women and children.

##### Judicial Interpretation and Protection of Children's Rights

**Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996)** – The Supreme Court held that the right to health is a constitutional right under Article 21, and it is the duty of the State to give proper medical care to all citizens, including children and convicts. **People's Union for Civil Liberties v. Union of India (2001) (Mid-Day Meal Case)** – The Court ordered the mid-day meal scheme for children studying in schools so that nutrition level would be improved, enforcing State duty under Article 47.<sup>36</sup>

##### Relevance for Children of Incarcerated Mothers

Detained children residing with their mothers are malnourished, not provided any medical attention, and stay in unhygienic conditions. As per Article 47, the state shall provide:

- Proper nutrition for pregnant and nursing mothers in prisons
- Improved health and immunization of children in prisons
- Sanitary and safe housing in prisons

Indian Constitution has a strong legal framework for safeguarding children's rights, particularly those placed in risky situations such as children who are living with incarcerated mothers. Articles 21, 39, 45, and 47 collectively provide a right to life, protection against exploitation, education, health, and adequate nutrition. Judicial interpretations widened the scope of these rights by laying down the responsibility of the State to provide for the welfare of children and their complete development. In spite of these constitutional safeguards,

<sup>36</sup> Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 S.C.C. 37 (India)



there are enforcement issues such as the need for improved prison conditions, alternative care for child prisoners, and more enforcement of rights.

### **3.2 LEGAL FRAMEWORK FOR WOMEN PRISONERS AND THEIR CHILDREN IN INDIA**

Indian law provides for the special vulnerability of women prisoners and their children in order that their rights, dignity, and health are maintained. Judicial pronouncements, legal frameworks, and policies have developed a system that responds to the special requirements of women prisoners, such as pregnant women, lactating women, and children residing in prisons.

#### **1. Constitutional Provisions**

The Indian Constitution lays the foundation for safeguarding women prisoners and their children by granting them fundamental rights and directive principles for protection of human dignity, equality, and welfare.

**Article 14 (Right to Equality)** – Provides for non-discrimination against women prisoners and equal protection of laws.

**Article 15(3) (Protective Discrimination in favor of Women and Children)** – Authorizes the State to give special treatment to women and children so that special legislation meeting their needs in prisons can be made<sup>37</sup>.

**Article 21 (Right to Life and Dignity)** – Interpreted by courts to encompass the right to humane treatment, with medical care, and child-friendly environment by women prisoners and their children.

**Article 39(e) and 39(f) (Directive Principles of State Policy)** – Invokes the State to make sure children are not neglected or placed in conditions which may be harmful to their development.

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<sup>37</sup> India Const. art. 15, cl. 3 (authorizing the State to enact special provisions

for women and children, thereby allowing protective legislation like prison reforms on a gender basis and child welfare in custodial institutions).



**Article 45 (Early Childhood Care and Education)** – Highlights the significance of proper care and education of children up to the age of six years, including children residing in prisons.

**Article 47 (State's Responsibility for Improving Public Health)** – Requires the government to provide prison mothers and children with nutrition, maternal and child health care services.

## 2. Statutory Legislation and Policies

### (a) The Prisons Act, 1894

The Prisons Act, 1894, is the principal legislation governing prison administration in India. It does not contain gender-specific provisions for women prisoners. State amendments have incorporated certain special measures, but a full-fledged national-level reform must be brought in.

### (b) The Model Prison Manual, 2016

To complete gaps in the prison legislation, the Model Prison Manual, 2016, issued by the Ministry of Home Affairs, contains guidelines for women prisoners and their children. It encompasses:

- Women prisoners being accommodated separately in a hygienic and sanitary manner.
- Pregnant and lactating mothers being given special attention, including ante-natal and post-natal care.
- Registration of children under the age of six years and their mothers in prisons.
- Provision of crèches, play areas, and early childhood learning centers for prison-residing children.
- Nutritional interventions, such as special diet provision for pregnant and lactating women.
- Promotion of non-custodial interventions for young child mothers according to international norms like the Bangkok Rules.



(c) The Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice Act, 2015, defines children residing in prisons as "children in need of care and protection" and offers alternative care in the form of, inter alia:

- Institutionalization of the child in specialized child care institutions in the event of inappropriate prison environment.
- Rendering education, health, and nutritious food to children residing with convicted mothers.

(d) Code of Criminal Procedure (CrPC), 1973

The CrPC offers a few precautions to women imprisoned, especially in the following ways:

- Section 437 – Establishes that bail can be granted to pregnant women and mothers of babies except where the crime is grave.
- Section 416 – Enacts that if a woman is sentenced to death and pregnant, the sentence of death shall be suspended and commuted to life imprisonment.
- Section 428 – Provides for set-off of period of detention against imprisonment term for reducing incarceration period.

(e) The Protection of Human Rights Act, 1993

This Act provides for the establishment of the National Human Rights Commission (NHRC) and State Human Rights Commissions, to oversee human rights violations in prisons, such as the treatment of women and children. The NHRC is required to inspect prison conditions from time to time and propose amendments.

(f) The Maternity Benefit Act, 1961

This Act provides pregnant women in detention with adequate medical care and maternity benefits, such as:

Pre- and post-natal care. Maternity leave and further nutrition to lactating mothers<sup>38</sup>.

(g) The National Policy for Children, 2013

Freeing children of imprisoned parents as a vulnerable group, the policy recommends:

- Special provision for education and health.
- Refraining from the separation of infants from their mothers except in the best interest of the child.
- Promoting the utilization of alternative care arrangements as and when needed.

### 3. International Human Rights Instruments Applicable to India

#### (a) United Nations Convention on the Rights of the Child (UNCRC)

India is a signatory to the UNCRC, under which there exists the Best Interest of the Child Doctrine. Children of incarcerated mothers are safeguarded in view of their rights under:

**Article 3:** The best interest of the child has to be a primary consideration in all decisions concerning children.

**Article 9:** Protects children from being separated from their parents unless it is in their best interest.

**Article 20:** Arranges alternative care if a child's home environment is not suitable.

#### (b) The Bangkok Rules (United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, 2010)

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<sup>38</sup> Maternity Benefit Act, No. 53 of 1961, India Code (1961), § 5 (granting maternity leave, medical attention, and other perks to expectant women, covered for women in detention according to judicial interpretation and prison regulations).

These rules are concerned with:

- Alternative sentencing for pregnant women and mothers with infants.
- Ensuring humane prison conditions for female prisoners.
- Ensuring proper healthcare and child-friendly prison facilities.

(c) The Nelson Mandela Rules (United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015)

Acknowledges that prisoners do not lose their basic human rights, such as access to health, education, and humane treatment.

Promotes special arrangements for female prisoners and their children.

#### 4. Judicial Interpretations and Landmark Cases

(a) **R.D. Upadhyay v. State of Andhra Pradesh (2006)** Provided clear instructions to children staying with imprisoned mothers. Directed nutrition, medical care, education, and child-friendly conditions in prisons.

(b) **Sheela Barse v. Union of India (1986)** Emphasized the establishment of exclusive women's prisons and institutions. Sensed the vulnerability of women prisoners to custodial violence and negligence.

(c) **State of Maharashtra v. Madhukar Narayan Martika (1991)** Held that protection and dignity against custodial violence are to be extended even to women prisoners.

(d) **In Re: Inhuman Conditions in 1382 Prisons (2016)** The Supreme Court instructed the government to enhance the conditions of prisons, especially for women and children.

India possesses a strong body of law for the protection of women prisoners and their children with constitutional safeguards, statutory provisions, international human rights commitments, and judicial rulings. However, gaps in implementation need to be addressed through stronger policy enforcement, alternative sentencing, and prison infrastructure creation. The strengthening of

these measures will ensure that dignity, care, and protection are accorded to women prisoners and their children.<sup>39</sup>

### 5. Prison Regulations in India: Model Prison Manual and State-Specific Rules

Indian prison rules have a twin structure of national rules and state-specific rules, and the Model Prison Manual, 2016, is a guiding light towards uniformity of rule between states. As "prisons" are under the State List of the Indian Constitution, all states are free to formulate their own prison rules subject to the rider of conformity with national and international human rights standards. In spite of all these provisions, the harsh reality of prison life usually comes short, especially for women prisoners and their children. The Model Prison Manual, 2016, published by the Ministry of Home Affairs, lays down explicit instructions for the humane treatment of the prisoners, including women and children who reside in the prisons.

It stresses the necessity of having separate cells for women in prisons in order to provide them with dignity and security, and only lady officers are to be deployed to look after them. It also calls for special treatment for expectant women and mothers with young children, and providing them access to prenatal and postnatal health care, nourishment, and appropriate medical treatment during delivery. The handbook also emphasizes the need for child-friendly prisons, and there have been calls for nurseries, crèches, and schools for children between zero and six who live with their imprisoned mothers. The emphasis is on ensuring that children, whether their background is disadvantaged or not, should not be exposed to the full force of their mother's incarceration. While the Model Prison Manual provides a model, all state's prison regulations suit the local requirement. Some states, including Maharashtra, Tamil Nadu, and Delhi, have adopted progressive steps such as legal aid centers, vocational training schemes, and improved medical facilities for women prisoners.

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<sup>39</sup> Inhuman Conditions in 1382 Prisons, (2016) 3 S.C.C. 700 (India)

Tamil Nadu's prison regulations, for example, place top priority on vocational training, which equips women to gain skills to be useful after their release from prison. Delhi jail regulations provide pregnant women appropriate medical attention and special dietary accommodation, giving honor to the additional susceptibility of incarcerated mothers.<sup>40</sup> Yet efficacy of such actions is decidedly uneven across states because implementation varies from consistent through incohesive with overcrowded cells, scarcity of resources, and lack of women prison workers. Even despite presence of regulations on the law, various problems continue to affect their implementation of such rules. Overcrowding is a serious issue, especially in women's prisons, which tend to be under-equipped to provide the special necessities of jailed mothers and their babies. Most prisons don't have proper facilities for medical services, which threatens maternal and infant health.

### 3.3 JUDICIAL INTERPRETATION AND IMPACT OF R.D. UPADHYAY v. STATE OF ANDRA PRADESH (2006)

The R.D. Upadhyay v. State of Andhra Pradesh & Ors. (2006) is a milestone judgment of the Supreme Court of India that had a significant effect on prison rules, especially in relation to female prisoners and children residing in jail. The judgment addressed matters of grave significance relating to the rights of children staying with their incarcerated mothers, ensuring they are well and safe while also safeguarding the constitutional and human rights of the mother and child. Background of the Case

The case arose as a public interest litigation (PIL) filed by R.D.

Upadhyay, a civil rights activist, who was pointing out the uncivilized lives of women convicts and also the lack of proper facilities to children residing within prisons. The petition also made known the conditions of children who are born inside prison or by their mothers under subhuman environments without proper diets, education, and healthcare. It was concerned about violations of basic rights under Articles 14, 15(3), 21, and 39(e) & (f) of the Indian Constitution. Supreme Court Remarks and Instructions

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<sup>40</sup> Gov't of Tamil Nadu, Prison Manual of Tamil Nadu ch. XIII, r. 739 (rev. ed. 1983)

The Supreme Court, noting the special vulnerability of prison children, issued detailed instructions for their protection, such as food, accommodation, health, education, and peace of mind. Some of the most crucial instructions of the Court were:

- Children under six years old should be permitted to go with their mother jail-bound but not as prisoners.
- The children living in jail should be provided with proper food, clothing, medication, and school facilities so that they can grow up in a healthy manner.
- Pre-natal and post-natal proper care and safe delivery arrangements should be provided to female prisoners, wherever feasible.
- Single living accommodation for mothers and children should be provided to maintain a child-friendly atmosphere in prisons, along with proper ventilation, sanitation, and hygiene.
- Education and recreation facilities should be established in prisons to isolate children from the gloomy realities of prison life.
- No stigma must be placed on prison-born children, and efforts must be made to protect their right to identity, dignity, and future well-being.

#### Judicial Analysis and Interpretation

The R.D. Upadhyay judgment reaffirmed the constitutional protection of women prisoners and their children by interpreting their rights in the light of Articles 21, 14, 15(3), and 39(e) & (f) of the Indian Constitution.

The Court particularly underlined that the right to life and liberty of the person under Article 21 not only applies to prisoners but also to innocent children who live with them.

It also referred to the principle of non-discrimination (Article 14) by establishing that children living in prison should not be deprived of basic rights because of their situation. In addition, the Court acknowledged Article 15(3) to permit special treatment of women and children, and Articles 39(e) and (f), where the State has an obligation to safeguard children's well-being and



development. The judgment also brought India in line with international human rights norms, specifically the United Nations Convention on the Rights of the Child (UNCRC)<sup>41</sup>, which prioritizes the best interests of the child as a primary consideration in all matters concerning them. The Supreme Court ensured that India's law changed towards directions that are aligned with international human rights obligations, proving that there is a call for a more humane response towards children with mothers in prison.

### Impact on Women Prisoners and Their Children

The ruling had significant implications for prison policy and legislative reform in India, influencing the Model Prison Manual 2016, and numerous state prison regulations. Following the ruling, several states revised their prison regulations to provide improved facilities for women and child prisoners.

One of the key impacts was the establishment of child-friendly prison complexes, where accommodations were provided for women with children and improved facilities for nutrition, education, and health were offered. The guidelines also saw the alteration in the attitude of judges, with bias towards non-custodial sentences for pregnant women and mothers of young children wherever feasible. The ruling prompted courts to consider options like probation, parole, or rehabilitation in the community, since according to international best practices like the Bangkok Rules, gender-sensitive prison policy is to be ensured. Despite the latest trends, problems with implementation persist.

Overcrowding in prisons, poor quality of health care services, and absence of proper monitoring systems for children who are separated from their mothers continue to exist. Fewer than half of the prisons have adequate crèche and preschool facilities, and rehabilitation of children on discharge remains poor. Nevertheless, the R.D. Upadhyay judgment established a significant precedent, affirming once again that prison policy needs to be revamped on humanitarian grounds such that no child loses their rights unfairly simply because their mother is in prison. The Supreme Court ruling in R.D. Upadhyay

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<sup>41</sup> R.D. Upadhyay v. State of A.P., (2006) 3 S.C.C. 690 (India)

v. State of Andhra Pradesh (2006) was a landmark judgment in guarding the rights of jailed women and their children and correcting institutional flaws in India's prison system.



## CHAPTER IV

### IMPACT OF MATERNAL INCARCERATION ON CHILDREN (BASED ON LITERATURE AND REVIEW)

#### **4.1 PSYCHOLOGY AND EMOTIONAL IMPACT**

##### Separation Trauma

Separation trauma is the most intense psychological effect that has been experienced by children of convicted mothers. Sudden and in most instances, involuntary separation of a child from the primary parent interrupts the child's emotional security and sense of security. Attachment to the mother is extremely crucial to the initial life of a child, with the child acquiring emotional stability, trust, and comfort. When this connection abruptly is cut off by confinement, children do pick up a variety of psychological conditions, such as anxiety, depression, and post-traumatic stress disorder (PTSD). Infants and toddlers are especially susceptible to separation trauma because they depend on mother's presence to meet their physical needs and emotional security<sup>42</sup>.

Research has shown that early mother-child separation may result in attachment disorders in children, in that children over-attach and fear abandonment or under-attach and resist developing close relationships. These tendencies would extend to adolescent and adult life, influencing their capacity for forming healthy relationships, trusting caregivers, or attaining a secure sense of self. Apart from attachment problems, children of imprisoned mothers also have identity and self-esteem issues. They may become overly self-conscious, thinking that they are not good enough since their mother is absent. This may cause them to be aggressive, act defiantly, or withdraw. In more severe situations, separation trauma manifests through self-harming behavior, suicidal ideation, or drug use as children search for ways to deal with undissolved pain. Moreover, the environments of maternal detention may contribute further to the

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<sup>42</sup> Rebecca Shlafer & Laurel Davis, The Impact of Parental Incarceration on Children: A Review of the Literature, 4 Int'l J. Child & Youth Fam. Stud. 198, 204–06 (2013)

trauma. When the child witnesses the arrest, the process is indeed extremely painful and goes on stimulating flashbacks, nightmares, as well as increased reactions to stress.

If in cases children are taken out into foster homes or rotated from family to family, instability reinforces further the emotional distress.

Neglectful, displaced, and abandoned feelings become internalized to the point that it is hard for them to be safe or feel emotionally secure anywhere. The effects of separation trauma can carry over into adulthood, and if left unaddressed, can develop into a cycle of psychological suffering, school and social issues, and delinquency. To reduce these effects, kids need their emotional support and care coordinated, counseling, and routine caregiving arrangements so they can come to terms with their mother's death and learn better coping strategies.

### Developmental Challenges

Incarceration of a mother severely handicaps the intellectual, emotional, and social development of a child, with long-term effects that last their whole life. Lack of care by a mother during critical stages of development can cause delay in language development, emotional control, and social functioning<sup>43</sup>.

One of the most important issues in development is the disruption of emotional intelligence and self-regulation. Children seek their mothers for guidance in how to control and interpret emotions. Lack of guidance from mothers makes them deficient in controlling impulsiveness, frustration, and expressing feelings in an appropriate way. Incarcerated mothers' children were found to be more stressed, irritable, and aggressive due to the lack of emotional guidance that would enable them to utilize their feelings constructively.

It also impacts cognitive development, especially in school age and early childhood. As per studies, children exposed to trauma, such as maternal separation through incarceration, are more likely to do poorly on cognitive and

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<sup>43</sup> Elizabeth I. Johnson & Jane Waldfogel, Children of Incarcerated Parents: Multiple Risks and Children's Living Arrangements, in *The Impact of Incarceration on Families and Communities* 97, 99–101 (Jeremy Travis & Michelle Waul eds., 2003)

academic testing. Deficits in concentration, memory, and lower IQs have been associated with the traumatic effects of maternal absence. Also, toxic stress, a condition that occurs when a child is exposed to chronic adversity without the support of adequate emotional support, can literally alter brain development physically, affecting areas responsible for learning, decision-making, and emotional regulation. Social development is also a field where children of incarcerated mothers faces severe difficulties. Shame of having a parent behind bars will make children get bullied, socially ostracized, and isolated. The majority of children are embarrassed or humiliated by their mother's incarceration and therefore avoid making friends or engaging in social activities. Social isolation leads to low self-esteem, depression, and difficulties to form meaningful relationships in life. Children also endure the absence of role models and mentorship. Lacking this direction from their parents, they will seek and often find the wrong role models, including peer groups that engage in delinquent activities. Studies have indicated that children with parents in prison are at higher risk of juvenile delinquency and criminal activity and perpetuate a cycle of incarceration from generation to generation. This is added to by the absence of positive reinforcement, authority-driven discipline, and emotional support that a mother would otherwise exist to offer.

In addition, home instability—by means of foster care, temporary guardianship, or institutional placements—opens the door for children to have trouble building a solid sense of identity, security, and belonging. Frequent switching among guardians breaks their emotional bonds and makes it hard to establish a support group.

To mitigate these developmental challenges, such children require early intervention services, secure care, emotional support, and educational assistance. Child welfare organizations and schools must have special programs for facilitating such children to develop resilience, manage emotional hurt, and acquire healthy social functioning. They require therapeutic interventions, mentorship schemes, and community-based support systems to enable them to achieve long-term emotional and social functioning.

Without proper support, the prison sons and daughters are left with long-term adverse effects in mental health, relationships, and future prospects. Helping to meet their developmental needs involves policy changes, organizational intervention, and social awareness to break the cycle of trauma and insecurity they must go through.

#### **4.2 SOCIAL AND ECONOMIC EFFECTS OF MATERNAL INCARCERATION ON CHILDREN**

##### Stigma

The Stigma Burden Children Of mothers who become imprisoned are likely to experience social discrimination and stigma, which tends to have lasting emotional and psychological impacts. The society views imprisonment as crime irrespective of the situation and passes this stigma to children of the imprisoned. The children in return are usually ostracized, bullied, and referred to as "criminals in the making" as a result of their mother being imprisoned<sup>44</sup>.

Goffman (1963) in his book *Stigma: Notes on the Management of Spoiled Identity* defines stigma as a socially discrediting state that diminishes the person's identity in the eyes of others. The child acquires this stigma when a parent is imprisoned, leading to social exclusion, rejection, and internalized shame. Research has established that children of prisoners are more vulnerable to peer rejection, lower self-esteem, and higher psychological distress (Murray & Farrington, 2008).

Moreover, stigma crosses family levels in the aspect that relatives are avoided by shame or intimidation by the community. Foster family members in some instances protest at taking charge of the child fearing their reputations will be spoiled or they will be given expenses. The rejection exacerbates the emotional pain and abandonment feelings in the child.

The stigma of having a prison-going mother greatly influences the mental well-being of a child. According to research by Wildeman and Turney (2014), children with a jailed parent are most likely to develop anxiety,

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<sup>44</sup> Carol Burton, *Collaterally Damaged: The Effects of Maternal Incarceration on Children*, 50 *Fam. & Cmty. Health* 215, 217–18 (2015)



depression, and antisocial personality. They internalize the negative opinions of society, and hence they self-stigmatize and lose their self-esteem. This emotional burden may persist into adulthood, discouraging them from establishing healthy relationships, acquiring education, and becoming productive citizens.

#### Economic Impacts:

Most of the imprisoned women were the main or only breadwinners for their children prior to being imprisoned. Their imprisonment results in a direct loss of earnings, and the child remains poor and in economic hardship. According to The Sentencing Project (2021) report, two-thirds of the imprisoned women were the main supporters for their families prior to imprisonment. When the women are imprisoned, their children face housing instability, hunger, and the absence of basic needs<sup>45</sup>.

They can be left with relatives who might not possess the economic means to take care of them. They can be put in foster care systems, which might not offer enough emotional or economic stability. Research has indicated that foster care children as a result of parental incarceration have greater probabilities of becoming homeless, school dropouts, and poor in the long term (Graham & Harris, 2012).

If the child is fostered with more distant relatives, these foster parents will be stretched to care for the child, particularly if they themselves are financially struggling. Grandparents, as default placement givers, may be on pensions and therefore unable to access other avenues to pay for such essentials as education, medical care, and nutrition. A study by Eddy & Poehlmann (2010) established that grandparents caring for the children of jailed parents are likely to be burdened by economic hardship, emotional stress, and poor health due to the additional responsibility. Due to Poverty Financial insecurity directly affects an impacted child's education. Children who live in poverty are likely to experience challenges such as Irregular school presence as a result of habitual

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<sup>45</sup> The Sentencing Project, Incarcerated Women and Girls 3 (2021), <https://www.sentencingproject.org/reports/incarcerated-women-and-girls/>

changes in residence Inability to access learning materials and extracurricular activities Increased dropout rate as a consequence of low finances Haskins (2014) states that children whose parents are imprisoned are likely to experience scholastic failure and unemployment since they are economically vulnerable.

#### Educational disruptions:

Educational disruptions are yet another major effect of maternal incarceration.

The turmoil developed through the imprisonment of their mothers is sure to create unforeseen schooling. Children are transferred from one home or one foster care system to another, creating many school transitions. This uncertainty halts their schooling continuity, depriving them of stable teacher-pupil and peer relationships. Further, the psychological hurt of separation, coupled with financial stress, might also affect their performance at school negatively. All but a few of the jailed mothers' children experience concentration, motivation, and general well-being problems at school. The absence of support groups in schools adds to their challenges. Without the presence of the main caretaker, they are usually not directed appropriately and end up with negative school reports, and in others, drop out of school. This intervention in education limits their future opportunities, and it is even more difficult for them to escape the cycle of poverty and marginalization. The denial of institutional support to the children of prison mothers enhances their miseries even further.<sup>46</sup>

Policies and welfare schemes in India today focus mostly on the rights and rehabilitation of prisoners but not on the miseries of their children.

Even though children under the age of six years are legally permitted to stay with their mother in prison, very little support is extended to those who have to stay outside the prisons. Once split apart, these children are left to fend for themselves with no to limited institutional care

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<sup>46</sup> J. Mark Eddy & John B. Reid, *Children of Incarcerated Parents: A Handbook for Researchers and Practitioners* 42–45 (2011)

### Lack of Schooling: Disrupted Schooling and Persistent Consequences

Disrupted schooling is also among the most direct and harmful consequences of maternal imprisonment. When the mothers get incarcerated, children's home life often gets disrupted. They may get sent to the care of extended family, foster family, and institutions, and in some cases, left to live alone. This instability will typically be accompanied by inconsistent school attendance or, in the worst possible condition, total school withdrawal. Constant caregivers' changes lead to children being shuffled between schools, disrupting not only their learning process but also compelling them to continually adjust to new settings. This constant disruption brings colossal education gaps, and it is challenging for them to catch up with other classmates. Besides, children of imprisoned mothers are also at great risk of enduring emotional abuse, indirectly influencing their performance at school<sup>47</sup>.

Being separated from their main caretaker translates to abandonment, anxiety, and confusion that distract their focus from being diligent at school. Research has shown that such children tend to exhibit more behavior problems like hostility, withdrawal, and aggression than usual, thus impacting their performance at school negatively

When they are incarcerated, their children tend to be thrust into poverty, and it becomes hard for the caregivers to remit school fees, books, uniforms, and other school-related expenses. There is little state intervention or funds directed towards ensuring the upkeep of education of such children whose parents have been incarcerated. Lack of learning programs hampers such children of the valuable early childhood learning experience<sup>48</sup>.

### Challenges to Rehabilitation: Emotional, Social, and Structural Barriers

Apart from educational disruption, children with incarcerated mothers face significant challenges to rehabilitation and social reintegration. When the

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<sup>47</sup> Joseph Murray & David P. Farrington, Parental Imprisonment: Effects on Boys' Antisocial Behaviour and Delinquency Through the Life-Course, 46 J. Child Psychol. & Psychiatry 1269, 1272–75 (2005).

<sup>48</sup> Asian Centre for Human Rights, India's Hell Holes: Child Sexual Assault in Juvenile Justice Homes 6–9 (2013)

mothers are released, the children typically struggle to reestablish their bond with them. The prolonged duration away from home due to imprisonment creates emotional distance that is difficult to bridge, preventing the restoration of family bonds. Most children are abandoned or resentful, having been betrayed by their mothers' imprisonment. Emotional estrangement makes the rehabilitation process even harder since children tend to resist or struggle to reunite with their mothers. Incarceration stigma makes the rehabilitation process even harder<sup>49</sup>.

Released mothers are prone to social discrimination, and they struggle to get stable employment or housing. This has a direct impact on their children, who are left stranded in unstable or below-par living conditions. In most instances, former convict mothers have legal and administrative obstacles to gain custody of their children once more if the children were sent to foster care or to another relative. Without post-incarceration support, mothers cannot easily give their children a stable home, which slows down or prevents successful family reunification. Additionally, India's inability to establish well-designed rehabilitation programs means that mothers and children are denied the support they deserve. While other nations make use of family-based rehabilitation programs, India's criminal justice system as a whole concentrate on punishing and rehabilitating offenders and scarcely considers the collateral effect on their children.

India does not have standard reintegration programs for reinstating mothers' parental capacity or for emotional rehabilitation of children. This institutional failure compels the children to look after themselves and deal with the impact of the mother's incarceration without having the opportunity to benefit from counseling, social work, and educational support. Prison-born children also suffer the consequence of institutional neglect in their rehabilitation. There are no independent government departments or welfare programs in India for such children. The absence of state control exposes them to abuse, abandonment, and further marginalization.

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<sup>49</sup> National Commission for Protection of Child Rights (NCPCR), A Study of Children Living with Their Mothers in Prisons 31–34 (2013), <https://ncpcr.gov.in>

### **4.3 HEALTH AND NUTRITIONAL CONCERNS FOR CHILDREN OF INCARCERATED MOTHERS: INFANT CARE IN PRISONS ACCESS TO MEDICAL FACILITIES**

Their incarceration not only impacts the emotional and social welfare of their children but also considerably impacts their nutritional status and health, especially among infants and pre-school children who are permitted to remain with their mothers in jail. In most nations, including India, children under the age of six years are permitted to remain with their imprisoned mothers. Although this policy tries to exclude involuntary infant separation from their custodial parents, prison life does not accommodate the overall development of infants. Poor medical facilities, minimal feeding schemes, and sub-average standards of accommodation in prisons overall put at risk the health and well-being of these infants. Also, children separated from their jailed mothers have their own ailments, most of which are induced by poor institutional care, poor exposure to medical care, and poor nutrition. Infant Care in Prisons: A Neglectful Environment<sup>50</sup>

In India, under the Prison Act, 1894 and amendments thereto, children under the age of six years are permitted to be with their jailed mothers.

Even though the policy aim is to preserve the mother-infant relationship during the early years, the state of infant care in prison complexes is despicable. Prisons are not infant or young child care facilities but adult prisoner imprisonment centers. Therefore, children living within prisons are exposed to squalid, congested, and even dangerous surroundings. One of the most critical issues is the inability of children to receive adequate nutrition while in jail. Prisons serve the same diet to children as they do to adults without considering infant and toddler nutritional needs.

The denial of access to proper medical facilities to children of imprisoned mothers is a systemic flaw. Jails possess limited health services, and

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<sup>50</sup> National Commission for Protection of Child Rights (NCPCR), A Study of Children Living in Prisons with Their Mothers 15–22 (2013), <https://ncpcr.gov.in>



the medical personnel present are trained for adult health but not pediatric health. Medical personnel in most situations are summoned only when there is an emergency, and chronic or preventive health matters remain undetected. Lack of ongoing medical attention results in delays in child development, nutrition deficiency, and chronic diseases that remain undetected and untreated.

Additionally, where there are health facilities, the service quality is usually poor. Most prisons use state hospitals for medical care, but it is usually slow and bureaucratic for a child to be referred to an outlying hospital in the event of sickness. Inefficient referral systems in healthcare mean that children with serious medical conditions may be denied or delayed treatment. In emergency situations, this tardiness is life-threatening. Further, the absence of pediatrics training among prison officers and first aid for children is a multi-factor for mismanagement in medical emergencies.

For the children who have been taken away from their jail-bound mothers, access to medical care is tenuous too. Those who are placed in foster homes, child care institutions, or with relatives mostly experience denial of medical care because of financial or bureaucratic inefficiencies. The institutional and foster families tend to be undercapitalized, and this means inferior medical care and poor monitoring of children's health. In most cases, children of sentenced mothers are deprived of proper documentation, i.e., birth certificates or hospital records, and thus are denied access to public health facilities.

#### **4.4 EMPIRICAL INSIGHTS FROM SECONDARY SOURCES**

The problem of children with or without their incarcerated mothers is a multifaceted socio-legal problem to be addressed empirically on the basis of official statistics, human rights reports, and NGO studies. Secondary sources like the National Crime Records Bureau (NCRB), the National Human Rights Commission (NHRC), and non-governmental bodies like Prayas, the Commonwealth Human Rights Initiative (CHRI), and Save the Children yield valuable information regarding the extent, circumstances, and effects of maternal imprisonment on children. These empirical findings unveil the systemic neglect, policy lacunae, and human rights violations of this



marginalized population, and determine the areas of potential reform and intervention.

### 1. NCRB Data: A Statistical Profile of Women Prisoners and Children

National Crime Records Bureau (NCRB), Ministry of Home Affairs, releases every year the report "Prison Statistics India (PSI)" containing the statistics of female prisoners and children living with them. All these provide the quantitative picture of the problem of increasing children's population in prisons, demographic composition of mothers, and how the correction institutions perform<sup>51</sup>.

#### NCRB Figures regarding Women Prisoners with Children

Based on the most recent 2021 NCRB report:

There were 1,543 children in prison with 1,320 women prisoners in India. Out of these, 1,142 were children under six years of age, as seen in the law allowing children up to six years of age to stay with their imprisoned mothers.

The three leading states with highest children residing in prison were:

- (a) Uttar Pradesh: 326 children
- (b) Bihar: 204 children
- (c) Madhya Pradesh: 150 children
- (d) West Bengal: 121 children

The NCRB statistics indicate that 73% of women prisoners with children were undertrial detainees, and the lengthy judicial proceedings which most commonly leave children in jail for years when their mothers are still not guilty.

The socio-economic background of women prisoners also indicates that most imprisoned mothers have marginalized socio-economic backgrounds, adding to the risks to their children. The NCRB figures also indicate that huge

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<sup>51</sup> National Crime Records Bureau, Prison Statistics India 2022, Ministry of Home Affairs, Govt. of India (2023), <https://ncrb.gov.in/en/crime-india>

numbers of imprisoned women are illiterate or have primary education, and hence are less effective in promoting the rights and welfare of their children.

#### NCRB Statistics on Prison Conditions

Although the NCRB gives figures, it also shows the shortage of infrastructure and facilities for prison children:

**Shortage of Healthcare:** Throughout the country, only 1,886 medical personnel were employed in prisons, revealing a critical shortage of healthcare facilities. The absence of pediatrician's results in a very limited provision of age-appropriate healthcare for children residing in prisons.

**Educational Deprivation:** The 2021 NCRB report indicates that fewer than 4% of prisons had creche or educational facilities for children, leading to total deprivation of formal education for the majority of the children living in prisons.

The NCRB empirical findings give a dismal picture of the state of children in prisons. It shows the quantitative extent of the problem but not the qualitative in-depth information about the lived realities of these children.

#### 2. NHRC Reports: Human Rights Violations and Policy Gaps

National Human Rights Commission (NHRC) carried out various studies and prison visits to assess the quality of life of women prisoners and children. Qualitative findings in NHRC reports give data of relevance to human rights abuses, denial of access to medical facilities, and rehabilitation shortcomings<sup>52</sup>.

##### Observations by NHRC on Children in Prisons

The "Women in Detention and Access to Justice" report in 2018 by NHRC made the following observations:

**Insufficient Childcare Facilities:** A meager 21% of the prisons were equipped with independent childcare facilities in the form of creches or play areas. Children tended to remain in the same cells as their mothers.

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<sup>52</sup> National Human Rights Commission, Women in Prisons: India (2018),

[https://nhrc.nic.in/sites/default/files/Women\\_in\\_Prison\\_2018.pdf](https://nhrc.nic.in/sites/default/files/Women_in_Prison_2018.pdf)



- (a) **Poor Nutrition:** Children received the same diet as regular prisoners without the dietary variety required for proper growth.
- (b) **Poor Hygiene:** The report emphasized unhealthy and unhygienic conditions within prison cells in which children live. Insufficient availability of clean water and facilities for children's sanitation raised the risk of infection.
- (c) **Lack of Healthcare Ignorance:** The report emphasized inadequate paediatric care and immunization programs. No regular check-ups were conducted, and the majority of children weren't vaccinated altogether.
- (d) **Psychosocial Impact:** The NHRC indicated that prison children exhibited emotional disturbance and developmental retardation, but there were no provisions for mental health treatment or counselling.

#### NHRC's Recommendations

##### **Based on these findings, the NHRC recommended:**

The creation of child-friendly residential areas that are separate for prison children.

Periodic health screening and nutritional assessment for children.

Mandatory schemes for children in jails as far as education and recreation are concerned.

Establishing post-imprisonment rehabilitation programs for children.

While recommendations made by NHRC are in the nature of rights, failure to implement policy ensures that all of them are on paper only except some very few.

### **3. NGO Reports: Street-Level Realities and Advocacy**

Some NGOs who are working in the area of prisoners' rights and child protection have done research studies and intervention programs extensively, which yielded rich qualitative data on children's lived realities of mothers in

prison. Prayas, CHRI, and Save the Children are some such organizations that recognized systemic gaps in child protection and pushed policy reform<sup>53</sup>.

**Prayas: Field Studies and Intervention:** Prayas, a Mumbai-based NGO, offers service to women prisoners and their children in the form of legal assistance, counseling, and rehabilitation upon release from prison. In its 2019 report, Prayas discovered that:

**Neglect of Education:** Just 5% of children of imprisoned mothers were educationally trained within a prison. Failing schools had been accessible to most of them, and students were deprived even of minimum levels of learning.

**Problems of Rehabilitation:** Prayas' grassroots-level study found that children who were removed from their mothers struggled with access to education and health care because they lacked proper documentation (i.e., birth certificates).

**Poverty and Stigma:** The NGO also discovered that children of imprisoned mothers were stigmatized and socially excluded, and therefore it was challenging to rehabilitate them back into society.

#### CHRI: Violations of Human Rights

The Commonwealth Human Rights Initiative (CHRI) has conducted a lot of work regarding the condition of prisons in India, such as the case of children who live with imprisoned mothers. In its 2020 report, CHRI reported:

**Healthcare Shortfalls:** No regular health check-ups were provided for children in most prisons, and vaccination was not given sparingly.

**Nutritional Neglect:** The CHRI concluded that nutritional requirements of the children were rarely met within prisons, with infants and toddlers receiving nothing special.

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<sup>53</sup> Prayas, A Field Action Project of the Tata Institute of Social Sciences, <https://www.tiss.edu/view/6/projects/prayas/>

**Lack of Adequate Legal Safeguards:** The report faulted inadequate legal protection mechanisms to prevent violations of the rights of the children of mothers who were imprisoned.

**Neglect After Release:** CHRI reported instances of institutional abuse by different children after their release from prison with their mothers, where there was no rehabilitation support.

**Save the Children:** Long-Term Impacts on Children

**Save the Children 2021 child report in prison settings indicated:**

**Emotional Harm:** Incarcerated mothers' children had elevated levels of anxiety, depression, and attachment disorders.

**Challenged Education:** Children in separation struggled to stay in school due to a lack of financial assistance or institutional care.

**Policy Gaps:** The report pointed to the lack of coordination between prison authorities and child welfare agencies in denying children access to government welfare programs.

#### 4. Comparative Insights from Global NGO Studies

Quantitative global NGO studies by Penal Reform International (PRI) show that a number of countries have implemented child-centered reforms to advance the well-being of children of imprisoned mothers:

**Norway and Sweden:** Implemented child-centered open prisons, where imprisoned mothers can reside with their children in home settings.

**Germany and the Netherlands:** Offer family-based rehabilitation programs, with maximum parental contact and child support services.

**South Africa:** Allows imprisoned mothers to have children with them for at most age two, with a priority for placement in family or foster care later on.



## CHAPTER V

### COMPARATIVE LEGAL AND POLICY APPROACHES (LESSON FOR INDIA)

#### CHILDREN-FRIENDLY PRISONS ACROSS THE WORLD

##### **5.1 UNITED KINGDOM-MOTHER AND BABY UNITS**

The pain that a mother suffers due to her imprisonment is extremely aggravated by the fact that her child is being removed from her. Rather than imprisoning certain women in the UK, they are imprisoned within Mother and Baby Units (MBUs), which provide for childcare so mothers are able to take care of their children even when they are behind bars. These are located in certain choice women's prisons with the aim of calming the environment and allowing a mother to stay with her infant during the early months of the baby's growth. The policy objectives of the UK MBU are legally and ethically driven<sup>54</sup>.

The United Nations Convention on the Rights of the Child enshrines the provision that all decisions about a child must take a child's best interests as a primary consideration, together with the Bangkok Rules as additional support for not jailing mothers and setting a focus upon the scale of harm involved in separation from very young children. Locally, Prison Rules 1999 and Prison Service Order (PSO) 4801 suggest that imprisoned mothers be given the opportunity to live with the children, subject to the child being in care with the mother being in their best interests. In an MBU, prison environment is tempered again so that it will be more of a caregiving environment. Unlike typical prisoner cells, the facilities feature playrooms, nurseries, and home-style rooms that are useful for early childhood development.

All convicted mothers are not, however, given access to these facilities. The access is assessed by a multi-disciplinary team that screens for concerns

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<sup>54</sup> HM Prison & Probation Service, Policy Framework: Mother and Baby Units (MBUs), Ministry of Justice (U.K.) (2021), <https://www.gov.uk/government/publications/mother-and-baby-units-mbus-policy-framework>

such as the mother's behaviours, child safety, and rehabilitative potential. There are mothers who are denied entry, and these, or the children who come to the 18 – months milestone, are doomed to be parted. The procedure may be profoundly disturbing to mother and child alike. MBUs are crucial in preventing the damage that an incarcerated mother can cause. They have parenting courses to teach parenting, psychological and medical care, and vocational training, which enable these mothers to create a better future for themselves. In certain instances, courts order community sentences rather than custodial sentences, showing that the child's welfare is being taken into account. There remain difficulties. The scarcity of MBUs denies many eligible mothers any access at all. There is also objection if a prison, though upgraded, is an acceptable location for a child. Norway and Sweden, for instance, do not prefer to incarcerate mothers but rather permit them to care for their children in the community. At least, though, the UK's MBU system is an improvement. Further reforms must be implemented to guarantee that the needs of the child are never out of sight.

## **5.2 SCANDINAVIAN MODEL – COMMUNITY BASED ALTERNATIVES**

Words wouldn't be enough to describe the irreplaceable bond between a mother and her child. However, it is a sad reality that a large number of children are forced to grow up behind bars just because their mothers are in prison. Sadly, in India, there are many prisons all over the country that are severely understaffed and overcrowded leading mothers living in these facilities to accumulate with their children. While the environment in which these children are required to live in does not aid their mental and physical development, nothing can be done due to a lack of alternatives in the country's system of justice. Unlike other nations, Scandinavian countries like Norway and Sweden seem to place greater importance on rehabilitation rather than punishment which allows children to live with their mothers while restricting them from certain freedoms until they are deemed fit to roam scoot free alongside the rest of society. There does, however, seem to be a contradiction. As Sweden and

Norway do not imprison mothers for life seem to allow children the punishment free environment<sup>55</sup>.

Norway and Sweden seem to have perfected the balance between allowing free reign while still enabling supervision. The route whereby a child's freedom might be revoked is purely for the sake of reformation seems to unify everything together. The measures listed above allow active mothers to tend to the needs of their children while enabling them to carry out community betterment tasks such as supervised volunteering, electronic monitoring, challenged based rehabilitation programs, and home detention. These methods together allow expending that sought after time with children as well as ensure accountability. At the end central idea is said to be revolutionary as it stands that no one aims for punishment no matter the circumstances without taking into deep consideration when the they are paying such a price is the child's welfare.

### **5.3 SOUTH AFRICA – CASE OF M V. THE STATE (alternative sentencing for mothers)**

For any child, the loss of a parent to prison is a shaping experience. In M's situation, and in most situations, when a mother goes to prison, children are left behind—perhaps without secure care, emotional stability, and economic means. This was precisely the issue in the milestone South African case of *M v. The State* (2007), which transformed the approach of the courts to sentencing mothers with dependent children. The case established a clear precedent: justice cannot be achieved at the expense of the well-being of a child<sup>56</sup>.

### **5.4 PRISON NURSERY PROGRAMS VS. ALTERNATIVE SENTENCING**

Prison nursery programs are designed to enable mothers to have a shared living space with their babies while in prison. The United States, the United Kingdom, and Germany have developed special prison wings where mothers can look after

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<sup>55</sup> Penal Reform International, *Global Prison Trends 2022*, and the Council of Europe Annual Penal Statistics (SPACE), and they find that Scandinavian nations, worldwide, are repeatedly registering the lowest rates of recidivism and imprisonment on the planet owing to their child-centered and community-oriented policy regimes

<sup>56</sup> *M v. The State* (2007): South Africa's Constitutional Court ruled that courts must consider

the best interests of children before sentencing a primary caregiver to prison.



their infants under strict supervision. Cribs, play facilities, and parenting classes are offered by these prisons, and mothers are allowed to stay in touch with their children throughout the early years of life.

In the United States, a few states such as Nebraska and New York have prisons with nurseries that are decades old. Such prisons help decrease recidivism by enabling mothers to gain parenting techniques and have an emotional bond with the kids. The United Kingdom also has Mother and Baby Units (MBUs) which enable mothers to nurture their infants in special prisons that are less like the typical jail environment. Germany has taken it one step further and provided semi-open prisons where the women can live with their children while they work or get rehabilitated.

#### Kids Raised in Prison: In Support of Nursery Programs

Prison nursery programs are designed to enable mothers to have a shared living space with their babies while in prison. The United States, the United Kingdom, and Germany have developed special prison wings where mothers can look after their infants under strict supervision. Cribs, play facilities, and parenting classes are offered by these prisons, and mothers are allowed to stay in touch with their children throughout the early years of life.

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Yet, despite their advantages, prison nurseries also have limitations. Even when things go smoothly, children are still raised inside a prison where they must accommodate restrictions and institutional routines. Emotional costs to both mother and child can be tremendous, and critics contend that any child should never be forced into beginning life within a prison cell. Further, the

programs discriminate—not every prisoner is a mother, and thus many kids are still being forced into estrangement.

### **5.5 WHAT INDIA CAN LEARN FROM INTERNATIONAL MODELS**

A mother is comfort, care, and security to a child. But if the mother is in prison, the child is likely to be left behind—scared, vulnerable, and at times even institutionalized. In India, where prisoners also comprise a huge number of women who are mothers, the judicial system disregards the effects of imprisonment on their children. But in the rest of the world, there are some nations that have built humane legal frameworks which guarantee that children are not hurt just because their mother did something wrong. India can and must do the same and create a just, effective, and child-friendly system of justice.

#### **A Better Way: Alternatives to Sending Mothers to Prison**

The most effective way of preventing a child from suffering the trauma of separation is to keep the mother out of prison whenever possible. Alternative programs have been implemented in most nations, including Norway, Sweden, and South Africa, where mothers can serve their sentence without losing custody of their children.

In Scandinavian nations, jail is reserved as the last resort, particularly for less violent crimes. Rather than sentencing mothers to prison, the judiciary awards community punishment like home imprisonment, probation, or supervised treatment. In such a manner, mothers are free to care for the children but are held accountable for their misconduct.

South Africa's much-publicized case, *M v. The State*, revolutionized how mothers are sentenced by the courts. In 2007, the nation's Constitutional Court decided that before imprisoning a mother, judges should take into account the best interests of her children. If imprisonment would be detrimental to the child, judges should look at alternative penalties—like community service.



### When Imprisonment Is Imminent: Creating Spaces Child-Friendly

Other women have to be jailed, either due to the gravity of their offense or due to a lack of alternatives. In these situations, nations such as the United States, the United Kingdom, and Germany have instituted prison nursery programs so that babies are not taken away from their mothers at too early an age.

In the US, there are certain prisons that have nurseries for mothers where they can stay with their newborns alongside parenting classes and counseling.

In the UK, there are Mother and Baby Units (MBUs) that provide secure and supportive units where jailed mothers can stay near babies rather than being parted from them at birth.

### Assisting Mothers to Rebuild Their Lives After Incarceration

Even when they are released, most mothers are unable to get their lives back on course. Abandoned to look out for themselves, they become destitute, socially ostracized, and at risk for recidivism, which is detrimental to both them and their children. Canada and Australia have acknowledged this issue and focus on rehabilitation and reintegration.

Both nations offer counseling, job skills training, and secure housing to ex-offender mothers, offering them a genuine opportunity to start anew.

Mothers are also encouraged to participate in parenting programs so that they can reunite with their children and offer them a safe home.

How India can gain: In India, women who are released from prison are unable to get work and are socially isolated. Through post-incarceration rehabilitation programs, India can assist mothers to rehabilitate their lives, nurture their children, and break the crime cycle.

## CHAPTER VI

### ROLE OF THE JUDICIARY, HUMAN RIGHTS INSTITUTIONS, AND CIVIL SOCIETY

#### **6.1 JUDICIAL INTERVENTIONS IN PROTECTING PRISONER'S CHILDREN**

In addition to legal activism, NGOs also offer direct assistance—providing educational sessions, psycho-social counselling, and child care for imprisoned children. In certain countries in Latin America and Africa, NGOs have even established day care centres inside prisons to facilitate the growth of children under the guardianship of their mothers despite their imprisonment.

##### The Way Forward: A Justice System That Cares

Even with progress, there is still much to be done. Courts need to keep looking for non-custodial sentences for mothers wherever it is suitable, so that children do not lose their main caregiver. Prison nurseries and mother-child units need to be increased and properly funded. Human rights mechanisms need to step up monitoring, so that international standards are respected. And civil society needs to continue raising the voices of these overlooked children, reminding the world that justice cannot punish the innocent<sup>57</sup>.

A woman's wrongdoing should never decide the destiny of her child. A compassionate justice system knows, even as laws have to be followed, they can never be followed at the expense of a child's right to love, care, and security. Collectively, the judiciary, human rights bodies, and civil society can make a justice system where punishment does not mean deprivation of childhood.

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<sup>57</sup> UN Bangkok Rules, Rule 64; M v. The State (South Africa); and

Scandinavian community- based models



## **6.2 ROLE OF HUMAN RIGHTS BODY: NHRC, NCPCR**

### **Saving the Prisoners' Children: NCPCR and NHRC Role**

As the mother is taken away to prison, the life of the child is turned around. With her inside prison or fighting it out outside her, the child undergoes neglect, poor environment, and psychological trauma. In India, two of the most significant human rights organizations—the National Human Rights Commission (NHRC) and the National Commission for Protection of Child Rights (NCPCR)—have identified the protection role that these children are not being overlooked. Their activities extend beyond policymaking—it's all about safeguarding childhood from being lost in jails.

#### **NHRC: Safeguarding Children in Jails**

NHRC is India's human rights watch dog, protector of the rights of children such as they who are lodged in jail with their mothers. NHRC investigators have traversed the Indian jails year after year, laying bare grim realities—crammed cells, malnourished children, and the absence of even basic amenities like mattresses or playgrounds. Their reports have pushed these underground battles into the limelight, prodding governments into action.

One of the NHRC's key demands has been improved prison living standards for children—ensuring they get adequate nutrition, medical attention, and early childhood education. It has also demanded alternative sentencing for mothers, so kids wouldn't be held accountable for a crime they hadn't committed. Where possible, it has suggested non-custodial options such as house arrest or probation for mothers who have young children, preserving the family unit while still maintaining the rule of law.

The NHRC has also collaborated in formulating India's Model Prison Manual (2016), in which arrangements have been made to create child-friendly spaces in prisons. But all this is in writing with most of the jails not even

providing basic facilities. The pressure inflicted by NHRC on the authorities is essential in making such policies turn into realities<sup>58</sup>.

#### NCPCR: Speaking Out for the Children of Prisoners

While NHRC focuses on human rights in general, the NCPCR focuses only on children. It has done a lot to raise awareness about the rights of those children who are left behind in prisons—with their mothers if they are there, or otherwise apart from them.

The NCPCR also goes to jails, women's jails, and child care institutions regularly to check whether the rights of children are protected. It has objected to children over the age of six being kept in jails when they should be kept in safer places such as foster homes or child welfare homes.

More significantly, the NCPCR tries to avoid separating children from their mothers unnecessarily. It has suggested that the authorities try to keep children with extended family members instead of sending them to state institutions, which tend to be tough and impersonal.

The commission also collaborates with legal aid centers and NGOs to ensure that such children are schooled, given proper medical care, as well as counselling. Because at the end of it all, no child should ever feel abandoned just because their mum is in prison.

### **6.3 NGO AND CIVIL SOCIETY INITIATIVES – PRAYAS, PENAL REFORM INN INDIA, NATIONAL LAW UNIVERSITY INITIATIVES**

#### Caring for Abandoned Children: NGOs and Civil Society

When their mother is taken to jail, a whole life of a child collapses. There are some among them who are forced to stay in small jail areas, and the others are simply left outside with or with minimal help. Their educational needs, their emotional needs, even their minimum nutritional needs, are always in want in an institution that's solely concerned with punishment. It is courts and human

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<sup>58</sup> National Human Rights Commission, Model Prison Manual (2016), Government of India – Provision for child-friendly areas and oversight by NHRC.

rights organs that set the policy, yet it is the NGOs and the civil society bodies in the field who impact these children's lives.

In India, there are organizations such as Prayas, Penal Reform India, and National Law Universities (NLUs) that have challenged themselves with the task of not allowing these children to become invisible. They work with children in prison, assist outside children, and campaign for a child-friendly and more compassionate justice system.

#### Prayas: A Lifeline for Children of Prisoners

Prayas, an initiative of Tata Institute of Social Sciences (TISS), has worked for decades to advocate for the rights of prisoners' children. Their slogan is straightforward and strong: nobody's child should suffer because a parent is in prison.

For the children in prisons, Prayas assists in opening play areas and nurseries so that the children will not have to grow up in barren, gloomy places. They also assist the prison authorities in offering improved nutrition and health to the mothers and the children<sup>59</sup>.

For outside abandoned children, the organization takes them to their safety homes, enrolls them in school by getting them admitted, and offers them emotional counselling. Most of these kids carry stigmas to be addressed, and Prayas intervenes to give them a future life beyond their mother's jail period.

For mothers in jail, they advocate for alternative sentencing—such as probation or community service—so women who have babies don't have to go to jail when safer alternatives are present.

By their efforts, Prayas has changed the lives of thousands of children and shown that care and compassion are possible even in the most desperate of situations.

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<sup>59</sup> Prayas – A Field Action Project of TISS. Rehabilitation and advocacy work for children of prisoners. <https://prayas.tiss.edu/>



### Penal Reform India: Fighting for a Fairer System

While Prayas intervenes with the children who have been directly affected, Penal Reform India (PRI) is trying to repair the system itself. They feel that prisons need not be places of punishment only, but places where justice is administered with compassion.

PRI seeks policy reforms which are child-sensitive justice. For instance, they encourage judges to think about a mother's care-giving role before sending her to prison.

They see life behind bars, exposing children and their mothers to the harsh reality of prison life. Their research has revealed overcrowding, undernourishment, and a lack of child-friendly spaces in Indian prisons.

PRI also assists former convict mothers to begin anew, enabling them to reunite with their children and become a part of society again.

Through lobbying, legal reform action, and research, Penal Reform India makes sure that the children and their mothers are heard.

### National Law University (NLU) Initiatives

The National Law Universities (NLUs) across the nation have come to offer legal assistance to the prisoners and their families. The law schools do not only teach law principles—these schools actively assist women and children through the justice system.

Most of the NLUs have Legal Aid Clinics, wherein law students and teaching staff provide free legal consultation to imprisoned mothers, who are granted bail or alternative sentences<sup>60</sup>.

They conduct research on prison reforms in collaboration with NGOs and judiciary to address the issue of difficulty faced by prisoners' children.

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<sup>60</sup> NALSA sponsored Legal Services Clinics of National Law Universities for providing legal aid to prisoners and for providing access to justice

A few of the universities conduct outreach programs, wherein they mentor one-to-one the children of prisoners, provide education support, and legal advice.

For instance, NLU Delhi's Project 39A has been instrumental in shedding light on the struggles of women prisoners and their children, pushing for a legal system that balances punishment with rehabilitation.

### Building a Future Where No Child is Left Behind

The efforts of NGOs and civil society groups have transformed lives, but there is still much to be achieved. Most prisons continue to lack adequate nurseries, and those children who remain outside are neglected. In spite of laws and regulations, these are poorly enforced, and most of the mothers continue to stay in prison with no regard for their children.

#### India requires:

Greater budgetary allocation and assistance to NGOs operating among prisoners and their children.

Increased collaboration between civil society, human rights institutions, and the judiciary.

Increased enforcement of child-sensitive policies within the criminal justice system.

A child must not be penalized for his/her mother's error. Due to the incessant efforts of NGOs such as Prayas, Penal Reform India, and NLUs, numerous children are provided with a second opportunity in life. But there is still much to be done. Until and unless all the children of imprisoned mothers are protected, educated, and nourished, the battle is still being fought.

### **6.4 PUBLIC INTEREST LITIGATION PIL AND ADVOCACY**

For any child, the prison gates need not signal an end to an ordinary childhood. Yet for countless kids whose moms are behind bars, life remains far from normal. Some have to mature early behind the locked gates of prison, while others languish in neglect on the outside, suffering without protection and care.

Their needs remain ignored, their rights unheard. But with years gone by, PIL and legal activism have started taking their cases to the courts—compelling the judicial process to take notice and safeguard these underprivileged children.

### How PILs Have Changed the Lives of Prisoners' Children

PILs have revolutionized India. Court appeals such as these permit worried citizens, attorneys, or groups to champion causes that disturb marginalized groups—such as prisoners' children—who would otherwise not be able to plead their case.

One of the more important PILs in this category was *R.D. Upadhyay v. State of Andhra Pradesh* (2006), which saw the Supreme Court acknowledge children's special requirements in prison life. The judiciary provided landmark guidelines, ensuring that:

Children residing in the prisons receive satisfactory nutrition, medicines, and education.

Pregnant women as well as those mothers who have children who are quite young are extended special care in the form of access to healthcare.

Agencies seek non-custodial options for mothers wherever feasible, to avoid unnecessary removal from their children.

These cases have influenced policy and brought about tangible change behind bars. Without such efforts, many of these children would have been left hidden—forgotten in a system not intended for them.

### The Role of Legal Advocacy: Voices That Keep Fighting

To win a case in court is half the battle. To make sure that the decisions are actually enforced is another. This is where campaigning by human rights organizations, lawyers, and activists comes into play.

Human rights organizations put pressure on governments to implement policies that deinstitutionalize prisons and render them child-friendly and that encourage alternatives to imprisonment for mothers.

NGOs and legal aid clinics work directly on women prisoners, securing bail for them or commuting their sentence so that they can return to their children earlier.

National Law Universities (NLUs) and pressure groups research and sensitize, pointing out the loopholes in India's penal system and mounting pressure on the government to act.

With all that they have accomplished, Model Prison Manual 2016 was revised with child-sensitive policies. Still, with such reform, the situation in most of the prisons continues to be deplorable.

### What Still Needs to Change?

Wins in the courts mean nothing if they are not enforced on the ground. Prisons still lack nurseries and appropriate areas for children, and mothers remain in prison just because they can't afford to pay their bail. The law-and-order **disconnect between law and life still remains huge.**

To actually make a change, what we need are:

Better compliance with court orders—such that policies are not merely printed on paper but actually count for something in people's lives.

More legal support to imprisoned mothers—so they get an equal opportunity as freedom and a better life for their kids.

Consistent activism and awareness—because if society wants change, otherwise these kids will just keep suffering in silence.

Public Interest Litigations and activism have already created a difference, bringing to light a section of society that was previously neglected. But the battle is not yet over. Until and unless none of the sons and daughters of jailbird mothers receive their entitled treatment, respect, and care, these legal battles—and outside of it—need to go on.

## **CHAPTER VII**

### **POLICY GAPS AND RECOMMENDATIONS**

#### **7.1 LEGISLATIVE AND POLICY GAPS IN INDIA**

In India, jailed mothers' children are significantly disadvantaged through loopholes in policy and legislation that do not properly protect their constitutional rights. Though there are occasional provisions in various laws and prison manuals, there is no one comprehensive scheme to ensure their well-being, security, and development. This incompleteness and inconsistency leaves these children in a very vulnerable position, frequently without proper care, education, or secure futures.

One of the biggest issues is a lack of particular dedicated law for the rights of children born in prison or who have no option but to stay in prison with their mothers. Policies regarding their residence are scattered in prison manuals, the Juvenile Justice (Care and Protection of Children) Act, and judgments. This leads to drastic differences in the manner in which prisons in different states treat such children, thus varying their conditions of living and access to basic rights<sup>61</sup>.

The length of time a child may remain with the mother who is behind bars is another issue where there is no humane and flexible policy. According to the Model Prison Manual, children are only kept in prison until the age of six, when they are then separated and institutionalized or sent to relatives. Though this rule is intended to shield children from exposure to the reality of prison life, it fails to address emotional and psychological trauma due to abrupt separation. In most instances, these children are placed in childcare institutions without arrangements for their welfare in the long term, leaving them vulnerable to

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<sup>61</sup> Children living in prisons with their mothers come under various piecemeal laws like state prison manuals, the Juvenile Justice (Care and Protection of Children) Act, 2015, and discretionary court orders, making unequal norms among states.

neglect, denial of living standards, and denial of support from families. Direct provision is not made to facilitate them to stay in school, stay with their mothers, or have their psychological needs addressed.

The state of the prisons themselves aggravates the situation further. There are hardly any prisons in India that possess the facilities of children. The buildings of most of the prisons lack children's areas, early learning classes, nutritional rooms, and healthcare facilities. Even though legal provisions indicate better treatment, most prisons do not provide even the minimum to these children. Not having a coherent rehabilitation program in place for the children once they leave the prison system only hurts them more as they have to look out for themselves in a world that cannot do much for them in terms of stability and opportunity.

Judicial and prison monitoring systems are also not effective in addressing these problems. Although many court orders have been issued to rectify the state of the prisons, little follows as regards the implementation thereof consistently. As there are no organized monitoring systems, issues concerning the well-being of such children often go unnoticed or are overlooked.

In order to bridge these loopholes, there is a pressing need for legislation that gives utmost priority to the rights of the children living in prison as well as their mothers. India needs to enact a law that safeguards these children when they are imprisoned as well as provides them with facilities for rehabilitation and reintegration when they are outside. Prison law needs to be altered so that it will require child-friendly conditions, quality food and education access, and best interest of the child-based child-sensitive policies for separation rather than on an age limit.

In addition, support systems after the separation should be put in place to ensure the children do not lose out as soon as they exit the prison system. They should be supported financially, maintained in education, and emotionally supported. Foster care and kinship care should also be used as alternative care plans, and by these means, children should be raised in good and safe conditions.



## **7.2 NEEDS FOR SENTENCING REFORMS FOR MOTHERS**

In India, the law of the land is apt to overlook a very real, but straightforward fact—when a mother is imprisoned, the child is just as worse off, if not more so. The present sentencing practice is predominantly punitive and does not take into account the devastation a mother's imprisonment can cause among her children. Without. Without reforms, children must live behind bars. Life isn't that wonderful here, or be taken away from their mothers and institutionalized, spending their childhood missing out on the love and comfort of family.

Most women in Indian prisons are imprisoned for trivial, non-violent crimes. Others are lone-time offenders who have been sentenced for relatively insignificant crimes like the possession of a drug or some petty thefts—crimes often linked with poverty and despair but not substantially dangerous to society. They go to prison while their children aren't considered as much. For the majority of them, prison time is not only punishment for them personally; it is that their children lose a chief source of care, uncertain, in emotional crisis, and vulnerable to entering further cycles of adversity<sup>62</sup>.

The system currently in place does not ask judges to determine whether a woman has minor children or not prior to sentencing her. Unlike other nations that are entrusted with such choices as house arrest, probation, or community service, India continues to rely on jail, even in situations not necessarily necessitated by its own conditions. If courts also considered the mother's role as a caregiver while passing the sentence, the state could then prevent avoidable breaking of homes and not let children suffer unnecessarily for no fault of their own.

For non-serious and non-violent offenses, there is a real opportunity to substitute prison sentences with alternatives where mothers can complete their sentences without losing their ability to look after their children. Open prisons, probation, and restorative justice programs can be applied in order to maintain families together while, at the same time, holding offenders accountable. These

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<sup>62</sup> India's absence of child-sensitive sentencing laws overlooks the collateral damage inflicted on children when mothers, who are sometimes convicted for poverty-related, non-violent offenses, are incarcerated

steps would not only prevent children from going into institutionalization but also rehabilitate mothers in society more effectively, lessening recidivism.

Another issue of concern is that too many women in Indian jails are undertrials, i.e., they have not been found guilty of any crime so far but are jailed solely because they cannot afford to pay bail. Most of these women are imprisoned for years waiting for trial, and their children are in limbo. Bailing out mothers of small children more readily, particularly on less serious offenses, would prevent undue family dislocation and help to ease the already congested prison system.

For real change to be evident, the justice system must become more attuned to the nature of motherhood and the impact incarceration has on family life. Judges must be made to decide if a woman is a primary caretaker before she is sentenced to ensure that justice does not entirely depend on punishment but also on keeping children in good health. The prison must not be the automatic fate for mothers with offenses that don't include harm to society as a whole. Rather, the effort must be realigned to rehabilitation, family-centered sentences, and a policy that considers the woman and child as individuals who deserve treatment, respect, and the ability to remake their lives in something else.

### **7.3 STRENGTHENING PRISONS AND CHILD WELFARE**

#### **Building a Better System for Incarcerated Mothers and Children**

When the mother leaves to go to prison, it's not just her world that gets turned over—it's her child's, too. What our system of prisons and child welfare statutes too often ignore, however, is that, in fact, their worlds are connected in ways beyond their control. Strengthening these policies isn't merely about better prison conditions; it's about making sure no child needlessly suffers because of a parent's imprisonment.

### Making Prisons More Livable for Mothers and Children

Indian jails were never meant for women, certainly not pregnant women or single mothers with toddlers. Most are poorly equipped even for the most elementary things: decent food, medical care, or a safe place for children to play. A child raised behind bars, hearing the clanging of metal bars and the bellowing of guards day and night—this is the life for millions of numbers.

If we really care about these kids, prisons must be more than mere holding facilities. They must have adequate nutrition programs, health clinics, early childhood centers, and safe, child-centered environments. A child must not have to come of age gazing at mere concrete blocks; they need play areas, books, and the opportunity to learn and grow like any other child.

In addition, the prison officials would need to be trained to see the needs of the women and children in such a scenario. A gentler approach—one that sees these women as mothers, and not simply as prisoners—can be the difference between a child's having a positive or negative experience of their early years.

### Rethinking Child Separation Policies

Under present law, a child can remain with his or her mother in prison until age six, then they are removed—most likely without much regard for what is in their best interest. Some go into government facilities, some into far-off relatives. But then what? Who makes sure they are taken care of, looked after, and not abandoned?

Rather than a hard cut-off at some arbitrary age, the response must be guided by what is best for the individual child. Some will be more suited to being retained with their mothers for a little longer, others requiring a more institutional environment removed from prison. But it has to be done with consideration, including social workers, child psychologists, and even the mother herself in deciding upon the best response.

Even if separation is inevitable, it must not mean permanent severance. Regular visits, telephone calls, and structured mother-child bonding activities must be

there to ensure that the emotional bond between them remains intact. A child should never be made to feel abandoned because his or her mother is under sentence.

### Creating Better Care Options for Children

For children who must be removed from their mothers, our present childcare system is abysmal. Institutional homes are filled to the brim, run haphazardly, and devoid of warmth and personal attention a child needs to develop properly. Too many children who are sent to these homes experience emotional abuse, neglect, and poor education.

Rather than resort to institutional care, the government should pursue more efficient means like foster care, family foster care, or community care in the forms of loving, stable homes. All children are entitled to home, not necessarily to sleep overnight.

In order to ensure this is achieved, coordination of effort has to be achieved between various agencies—prison authorities, child welfare organizations, social workers, and the judiciary. There has to be some system in place to monitor the well-being of children with incarcerated mothers so they are not left somewhere and abandoned.

### Retracking How We Think About Sentencing Mothers

Besides becoming obsessed with rehabilitating prison conditions, we most urgently need to revamp the way we sentence mothers in the first place. Most women in Indian prisons are arrested for non-violent crimes—petty theft, possession of drugs, or as a suspect in domestic case. A whole lot more frequently than not, they are new offenders, far more likely to be victims of circumstance than career offenders. And still the system ships them out without even considering to ask themselves: What happens to their kids?

The other countries have also realized this issue and come up with the other options—house arrest, probation, or community service—so that the mother will be jailed but not totally separated from her children. India also has

to do it. A woman is not harming society, but the child is going to miss its mother. Why?

Even for the women who have to do their time, the system can assist them when they are reintroduced to society. All too frequently, a mother is released from prison with nothing—no money, no employment, and no means of supporting her child. And if we truly want to break the cycle, we must have rehabilitation programs that allow these women to be able to work, begin again, and be reunited with their children.

#### Towards a More Compassionate System

Its central premise is one of simple fact: a child should not have to pay for her mother's ill fortune or poor decision. Hardening child protection and prison policy is about more than incremental infrastructure or regulation change—it is about learning the appalling human and emotional price of imprisonment.

Every child deserves a good start in life no matter where she is born. And all mothers, no matter what her life has been, should get to be with her child to some degree. By reframing how we think about working with mothers and children in prison, we can work toward building a system of justice that not just holds accountable but also safeguards, nurtures, and provides space for healing to families.

#### **7.4 ROLE OF STATE AND INTERNATIONAL BODIES IN IMPLEMENTING CHANGE**

##### A Shared Responsibility: Keeping Incarcerated Mothers' Children Safe

When the mother goes to prison, her child not only loses a parent but their safety, their routines, and sometimes even their future. The system never has time to wonder to itself: Who will care for them? Where will they live? Will they be safe? It is the responsibility of the state and the rest of the world, rather than the mothers alone, to provide answers to these questions. These women will probably be among the most vulnerable in society.

True change isn't everything about changing laws or constructing improved prison cells. It is about ensuring that these kids are heard, seen, and

safeguarded. Governments, human rights groups, and global entities have a duty to ensure that they help provide a justice system that does not render these children invisible casualties.

### What the State Must Do

The Indian government can, and should, alter the destiny of such children. Jails are not yet prepared to accommodate mothers and children. Most women in jail are imprisoned for crimes that are hardly worth it, but the punishment doesn't stop at them—it continues with their children, who must survive in difficult conditions or are taken away from their sole source of love and protection.

Jails need to be more compassionate environments. If the child must be kept in prison, then at least feed them well, well-medicate them, and let them have some place to play in safety. Imagine a three-year-old in jail behind bars with only their occasional few minutes outside in overcrowded prison yards. That's not for any child to experience. Children's prisons require playgrounds, trained caregivers, and a policy whose top priority is the child's best interests.

The state also needs to re-imagine separation policies. Currently, after six years of age, the child is separated from the mother, usually in most cases, without a future plan for the child. They end up in overcrowded homes where they get minimal emotional support, or they are fostered with their kin who might or might not love them. There is no monitoring to determine whether these children are safe or if they are being brought up in a supportive environment. Rather than the wholesale imposition of a single universal age cut-off, separation decisions should be made based on what will best suit each child. Some might remain with mothers for an additional few years, others might be helped by other types of care—either way, they are worthy of careful consideration, not a blanket policy.

For those children who cannot remain with their mothers, better options need to be formed. Currently, government childcare centres tend to be underfunded and sub regulation. Too many kids in such centres grow up deserted and unloved. Rather than placing them in institutions, higher priority needs to be placed on sending them to extended family, foster families, or



community-based care. Every child needs to have a home, not merely a residence.

Most of all, the state needs to reform the way it sentences mothers. Too many women are jailed for small offenses—petty theft, drug possession, or being swept up in domestic violence. Courts never take into account that these women are sole providers. In most cases, a lesser sentence—probation, community service, or house arrest—could enable them to serve their time without losing their children. If a mother is safe for society, it does not mean her child must suffer.

#### The International Community's Role

It is because it is not an Indian issue, it is global. Globally, children of incarcerated mothers are among the most neglected and underserved. All global agencies have a role to play in ensuring that nations such as India are doing everything to protect these children and not leave them behind.

The United Nations has already set down some very clear guidelines. The UN Convention on the Rights of the Child (UNCRC) provides that children must never be punished for what their parents have done. The Bangkok Rules, drafted with women prisoners in mind, prioritize child-centered prison policy and non-custodial penalties for mothers wherever possible. But signing these treaties is not sufficient—India needs to implement them substantively<sup>63</sup>.

Human rights organizations also play a crucial role in pressurizing governments to act. Institutions like UNICEF, Human Rights Watch, and Amnesty International can raise the issue of the fate of such children, urge policy change, and help sponsor programs that help improve their lifestyle. Without pressure from outside, it is all too easy for governments to overlook the plight of such children.

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<sup>63</sup> United Nations Convention on the Rights of the Child (UNCRC), 1989; United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 2010.

### A Collective Responsibility

Change must occur from all sides. The government of India needs to wake up and act to safeguard these children. Courts need to desist from always thinking of imprisonment as the only remedy. Prison guards need to understand that a prison child is no criminal but a vulnerable life which needs to be cared for. And the rest of the international community needs to keep agitating for change, provide support and ensure that there is no single child left behind.

At the heart of this issue is a simple truth: a child should not pay the price for their mother's incarceration. They must be allowed to have the chance to grow up in a warm, secure home, no matter where their mother is. Whether we, as society, are going to give them that chance is the issue....



## **CHAPTER-VIII CONCLUSION AND WAY FORWARD**

### **8.1 SUMMARY OF KEY FINDINGS**

#### **1. The Invisible Harm to Prison Children**

No conclusion of this study is likely more powerful and gut-wrenching than the wholesale neglect and invisibility of children growing up in prison conditions with their mothers. They are not prison children, but children who are exposed to the harm of imprisonment of their mothers. Their basic rights under the Constitution—education, health, protection, and development—are wholesale violated. These kids grow up in conditions that are neither conducive to their physical, emotional, nor intellectual growth.

Prison settings are, according to research, far from appropriate for children. They have no playing area, no learning area, nor a place of healthy socialization. Diet is inadequate, and pediatric medical care is scant or absent. This group, however innocent, is treated like they belong to the penal system.

#### **2. Disparity between Constitutional Promises and Ground Conditions**

India's Constitution promises equality (Article 14), non-discrimination (Article 15), and life and liberty (Article 21). Also, Directive Principles under Article 39I and (f) obligate the State to see that no child is obliged to live under conditions detrimental to their health and well-being. But this research discovers a widespread mismatch between such lofty constitutional idealism and a harsh reality here depicted.<sup>64</sup>

Despite court judgments, parliamentary protections, and human rights guidance, the rights of such children remain in effect practically theoretical. Without legal processes to monitor their care and hold institutions to account, a cycle of neglect persists.

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<sup>64</sup> Constitution of India, Articles 14, 15, 21, and Directive Principles under Article 39(e) and (f).

### 3. Fragmented and Inadequate Legal Framework

Although there are a number of laws and policies that deal with the welfare of prisoners and their children, like the Juvenile Justice Act, Prison Act of 1894, and the Model Prison Manual, <sup>65</sup>2016, none of these documents have a broad, legally enforceable framework for dealing specifically with the rights of children residing in prisons.

Each state also has its own laws and regulations, which create disparities in the upper age limit up to which children can follow mothers in prison (in most instances up to 6 years), the amenities they are entitled to, and the policies on separation and rehabilitation. It creates inequalities putting some children much more at risk than others.

In addition, there is a glaring lack of stipulations on the fate of such children once separated from their mothers. There lacks a systematic process to monitor whether they are all right after having been separated, or to secure their right of continuity of care.

### 4. Judicial Implementation Loopholes

India's superior judiciary has, on occasion, intervened to acknowledge and safeguard the rights of female prisoners and their children. Pathbreaking judgments such as *R.D. Upadhyay v. State of Andhra Pradesh* and *Shabnam v. Union of India* have rendered detailed directions for the care of children in prisons. But this dissertation discovers that enforcement of these orders is patchy and piecemeal.

Prison officials are generally unwilling or unaware of executing these judgments. Lack of institutional systems for the enforcement of compliance, training of prison staff, and allocation of finance also dilutes the effects of these otherwise liberal orders.

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<sup>65</sup> Juvenile Justice (Care and Protection of Children) Act, 2015; Prisons Act, 1894; Model Prison Manual, 2016.

### 5. Prison Culture and Design Is Not Child-Focused

Indian prisons are run and constructed on a punitive ideology, rather than rehabilitation or care—certainly not childcare. Consequently, these places are tough on children. The physical infrastructure is not child-friendly in terms of facilities. The culture—characterized by strict discipline, monitoring, and violence—is very traumatizing for children.

In the majority of the institutions, mothers and children share common living spaces. Issues they all have in common are overcrowding, dirt, absence of play material, and deprivation of education. Children get exposed to witnessing mothers' tension, punishment, and hopelessness, which ultimately lead to causing emotional and psychological damage.

### 6. International Standards Disregarded in Practice

India is a signatory to the UN Convention on the Rights of the Child (UNCRC) and to the Bangkok Rules on the treatment of women prisoners. The two international documents call for the best interest of the child, right to care within family context, and access to healthcare, education, and play.

In spite of making all such promises, this study opines that none of these global norms was appropriately included in the national prison regulations of the nation. All of this is absent among prison staff, and no systematic procedure is followed in adhering to international best practice.

### 7. State's Negligence as Guardian

If a child is growing up in prison, the State is really playing the role of caretaker or guardian. On such parent's patriae doctrine, there indeed is a government duty of care owed to such children. But this dissertation concludes that the State tends to waive the same.

The children are left to develop in isolated settings without emotional care and proper maintenance. There is no adequate institutional center for the separated children, and foster care centers are underdeveloped. There is no

central monitoring system to monitor the development and health of the separated children.

#### **8. Psychological and Emotional Damage**

Perhaps most troubling is the lingering psychological and emotional impact incarceration has on these children. The jail setting influences the way they perceive identity, their general mental health, and how well they can socialize. Many children learn the negative stigma of being incarcerated, holding onto the belief they are somehow to blame because of connection.

It results in conditions like depression, anxiety, retarded cognitive development, and social withdrawal. Mother-separated children acquire attachment disorders and deep emotional traumas that accompany them into adulthood. There is no post-separation care and mental health assistance in prisons is very limited.

#### **9. Neglecting Women Prisoners as Mothers**

Your study suggests that the prison system does not recognize the dual role of female offenders as both criminal and mother. Female prisoners are seldom provided with services that consider their status as mothers.

There is very little or no vocational rehabilitation, legal advice, or post-release care focused on their position as primary care providers. This denial of care is a great drain on both the rehabilitation of the mother and on the child's growth. The prison inmates are also unlikely to get visits from members of their families, thus extending another dimension of isolation.

#### **10. Neglect of Non-Custodial Alternatives**

One of the most important conclusions is non-realization of non-custodial options for women with young children. Despite global best practices and even Indian law granting bail or suspended sentences for dependent children, these are hardly ever used.



The justice system is ignoring the ripple effect of a mother's incarceration on children. Very few judges and prosecutors have received training to take into account child-centered alternatives like community-based rehabilitation, open prisons, or home detention in suitable cases. This results in unwarranted imprisonments that destroy the family system.

#### **11. Existing Guidelines and Manuals Are Not Followed**

While there are detailed guidelines in the Model Prison Manual, 2016, and Supreme Court guidelines for prison care of children, implementation remains skin-deep. Acute shortage exists of political will, resource availability, and institutional influence.

Human rights monitoring visits are rare and inadequate. Where they do exist, monitoring committees are ineffective. There is no uniform system for data collection, auditing prisons, or measuring outputs with regard to child welfare within prisons.

#### **12. Urgent Need for a Child-Focused Criminal Justice System**

Your thesis ends on an urgent call for change: reforming the criminal justice system with a child perspective and gender equity lens. This involves:

Understanding that prison children have different constitutional rights.

Treat prison children not as the appendages of prisoners but as full human rights-holders.

Give emphasis to rehabilitation and family reunions rather than punishment, particularly for non-violent or minor cases.

Only a rights-based and humane approach can ensure the dignity, development, and future of such children.

### **8.2 CONTRIBUTIONS TO LEGAL RESEARCH AND CHILD RIGHTS ADVOCACY**

This dissertation provides a serious and multi-angled contribution to legal scholarship as well as activism on child rights by exploring one of the most

neglected and urgently needed topics within current criminal justice scholarship: children's constitutional wellbeing and rights being raised with mothers who are serving prison time. In India as well as sprawling sections of the globe, law continues to think of prisoners in terms of their being adults unto the law. Therefore, the children who arrive in prison with their mothers' rights and needs are often marginalized from the dominant courtroom narrative. This dissertation sheds light on that shadow space, voice an invisible group and restructuring justice from an experience lens.

### 1.Reclaiming the Constitutional Promise for Incarcerated Children

Among the important contributions of this study is the in-depth examination of constitutional law and how the Indian Constitution, as wide and rights- protective in principle as it can be, has not been able to provide those protections to some of the nation's most vulnerable citizens—prison children. The dissertation presents a critical examination of milestone constitutional provisions, specifically Articles 14, 15(3), 21, and 21A. It brings to light finally how these theoretically universal rights are unevenly allocated or completely withheld in the case of prisons.

The promise of Article 14 for equality before the law and equal protection of the laws remains a mere illusion for children born or raised in prison settings. They are exposed to institutional inequality right from birth. Not only material comforts, but dignity, liberty, and opportunity as well, are withheld from them. The walls of the prison confine not just physical mobility but also exposure to quality education, medical treatment, and safe environments that can foster their intellectual and mental growth. Theirs is a world away from the norm of equality guaranteed by the Constitution.

Article 15(3) gives the state the authority to introduce special provisions for children and women. The dissertation reports, however, that in practice, still there is no special policy or welfare scheme for children compelled to stay along with their mothers in prisons. The lack of focused attention to this group

indicates not just administrative lapse but also an institutional insensitivity to their plight<sup>66</sup>.

Article 21, where the right to life and liberty are assured, is the constitutional foundation for a whole series of derivative rights—the right to live with dignity, the right to health, and the right to a clean and healthy environment. The dissertation places in stark contrast the systematic deprivation of these derivative rights to imprisoned children. They develop under conditions of overcrowding, filthy surroundings, malnutrition, absence of recreational and educational amenities, and complete lack of psychological care.

## 2. Revealing Failures of Legislation and Policy

The statutory and regulatory legislation provided for critical examination in the dissertation is another valuable contribution to legal studies. The examination is critical in the sense that it uncovers how legislations such as the Juvenile Justice (Care and Protection of Children) Act, 2015, the Prisons Act, 1894, and the Model Prison Manual have failed to sufficiently acknowledge and address the complex needs of imprisoned children<sup>67</sup>.

The Juvenile Justice Act, progressive in all other ways, is mostly focused on children in conflict with law and children in need of care and protection on account of abandonment, abuse, or neglect. This group of children who reside in prisons because their mothers are imprisoned does not quite fit into either of these categories. They thus find themselves in a legal blind spot— between legal regimes that do not include them or exclude them comprehensively.

In the same way, the Prisons Act, a colonial law, is outdated and has no provision whatsoever for children. The Model Prison Manual makes some general suggestions but falls short of mandating similar standards on the states or holding prison administrations accountable to any real obligation. Such faults

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<sup>66</sup> Article 15 (3) of the Indian Constitution

<sup>67</sup> Juvenile Justice (Care and Protection of Children) Act, 2015; Prisons Act, 1894; and Model Prison Manual, 2016

uncover not only policy lacunae, but also a disconnected and incoherent legal response to a highly vulnerable group.

### 3. Judicial Engagement: Gains and Limitations

The study also contributes critically by examining the role of the judiciary. Pioneering judgments like *R.D. Upadhyay v. State of Andhra Pradesh* and *Shabnam v. Union of India* show increasing judicial interest in the welfare of prisoners who are children. The cases resulted in some gradual shifts, such as orders to set up improved facilities and restrict the age until which children remain in prisons. Still, the dissertation clarifies that judicial interventions, however most welcome, are normally reactive and lack the coercive power of continuous enforcement. Judicial orders are susceptible to bureaucratic delays, and there is no institutional process to oversee compliance. In addition, dependency on Public Interest Litigation (PIL) is an exhibition of systemic inability to actively protect children's rights; the duty of the state cannot be made dependent on citizen petitions but must be rooted in active governance and law enforcement.

Through the examination of the gap between judicial activism and executive action, the dissertation argues for a more assertive, more coherent process of how court decisions are translated into long-term policy adjustment.

### 4. International Legal Obligations: An Unfulfilled Commitment

The comparative examination of international human rights treaties included in the dissertation is another significant contribution. India is a signatory to the majority of the important conventions like the United Nations Convention on the Rights of the Child (UNCRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

These global instruments impose immediate obligations on member states to ensure children are treated with dignity and that their best interests are taken into account in all state measures. For instance, the Bangkok Rules encourage countries to give priority to pregnant women and mothers of

dependent children in non-custodial sentences. The UNCRC provides for the child's right to survival, development, protection, and participation.

Still, the dissertation reveals that Indian compliance has been only symbolic to a large degree. There has been little transposition of domestic legal norms in India, and when policies exist, these are inefficiently enacted. The article not only brings the Indian state to book regarding its international obligation but also advocates for harmonization of domestic law to global best practice.

#### **5. Humanizing the Law: A Unique Narrative Contribution**

Unlike most strictly doctrinal legal texts, this dissertation succeeds in marrying legal analysis with human experience. It applies anecdotes—drawn from available fieldwork, reports, and case studies—documenting the psychological and emotional impacts of life inside prison on children. They are not merely exemplary; they serve as a moral compass for legal scholars and policymakers, reminding us that each case number hides behind a child growing up in a climate of fear, deprivation, and trauma.

Children are sometimes placed in the role of mere appendages to prison mothers, rather than as stand-alone rights-bearers. The dissertation replies to such presuppositions by recognizing them as human beings with rights of full and equal privilege to care, protection, and opportunity. Recasting the child thereby, while perhaps revolutionary, nevertheless, necessary, and incorporating emotional intelligence into legal scholarship and practice.

#### **6. Vision for a Child-Centric Criminal Justice System**

Amongst its most advanced contributions perhaps finds its thesis on a child-focused criminal system. This is not some utopia, but is rather based on the wealth of evidence, international strategies, and constitutionally derived principles.

#### **7. Reviving Paren's Patriae and Rethinking State Accountability**

The dissertation revives the parents patriae doctrine, which pledges the state to become a protector of those who cannot protect themselves. It holds the view

that the Indian state has to revive this role, particularly in the case of children who are being forced to be under the state by choice rather than coercion.

This is of jurisprudential importance. It transforms the concept of state responsibility from one of passive watching to active interference. It affirms that the protection of constitutional rights is not merely an issue of legal protection but structural investment in care, surveillance, and enforcement. An Interdisciplinary Blueprint, by integrating knowledge from sociology, child psychology, law, and criminology, the dissertation builds a rich multidisciplinary terrain for comprehending and solving the problem. It breaks down traditional silos and suggests a more holistic solution—a solution that engages children as complex individuals influenced by legal, emotional, social, and economic forces.

#### **8. Catalyst for Advocacy and Future Research**

Lastly, this dissertation is not a culmination—it is a commencement. It provides a foundation for subsequent research into such topics as long-term psychological effect, academic accomplishment, and reduction of stigma. It opens the door to cross-country comparisons and creativity in child welfare programming. It calls upon government, civil society, and academia to exercise mutual comprehension and coordination to ensure that this forgotten community is forgotten no longer.

#### **8.3 POLICY RECOMMENDATION FOR INDIA**

The confluence of child rights, prison reform, and constitutional imperatives poses a singular challenge in the Indian context. Children who reside with their imprisoned mothers exist in a liminal zone where rights are obedience, visibility is erased, and safeguards are absent. These children, who have committed no offense, are frequently denied core human rights, including nutrition, education, emotional growth, and medical care. The law in its present form is still not adequately poised to tackle this population's complex vulnerabilities. Policy, in that case, is the vital vehicle by which justice, protection, and care can be translated. The following expanded recommendations are informed by



constitutional principles, international human rights commitments, and children's lived experiences in confinement.

### 1.Reimagining Incarceration Through a Child-Centric Lens

The initial and most critical change needs to take place at the conceptual level. Indian penal policy and prisons have a punitive tradition, with adult offenders as the target. The existence of children in such environments, especially those below six years of age who live with mothers, defies the basic principles of child development, care, and constitutional safeguards. Hence, any serious policy change needs to begin with a child-oriented reconceptualization of prison settings. Children should not be treated as appendages to imprisoned adults but as separate rights-holders whose best interests are paramount to all institutional decisions.

A national-level directive or framework defining the rights of children in prisons needs to be written. This may be in the form of a National Charter for Children in Custodial Institutions, akin in tone and purpose to the National Policy for Children but specifically written for this vulnerable group. This charter should place highest importance on dignity, developmental concerns, and equality, and must be binding on all state prison systems.

### 2. Prioritizing Non-Custodial Strategies for Women with Children

One of the most significant recommendations is to embrace non-custodial orders for women, especially mothers of young children, especially when they are accused of non-violent or bailable crimes. Indian courts have followed this dictum in a series of cases, such as *R.D. Upadhyay v. State of Andhra Pradesh*, but implementation on the ground is patchy. Sentencing guidelines must include pre-sentencing child impact assessments, where the court takes into account the possible trauma and child development effect on a child while sentencing a mother. Probation community service, halfway houses, and electronic monitoring must be given priority for these women to break the cycle of successive generations going into prison. This aligns not only with the Bangkok Rules (UN Rules for the Treatment of Women Prisoners and Non-custodial

Measures for Women Offenders) but also with the doctrine of reasonableness under Article 21 of the Constitution.<sup>68</sup>

Also, the judicial system must be informed to make effective pleas for such alternatives. Legal representation of women in distress against the law must be accorded caregiving status and child welfare-based reasoning. A special section in the Criminal Procedure Code (CrPC) can be added requiring the court to specifically take into account the caregiving duty of the female offenders while issuing sentences.

### 3. Incorporating Specialized Mother-Child Units in Prisons

For instances where incarceration cannot be prevented, the prison system must be reorganized to incorporate children in a respectful and developmentally appropriate environment. This means the creation of specialized mother-child units within prisons that are separate from the general prison population. These units should not resemble carceral environments but rather serve as secure childcare facilities incorporated into the prison architecture.

These units must have access to basic services, including:

- (a) Early childhood educators and caregivers trained in trauma-sensitive practice.
- (b) Psychologists, and medical professionals.
- (c) Healthful, normal meals according to children's dietary needs.
- (d) Educational activities and materials designed to the child's age that model pre-school classrooms.

The Model Prison Manual does include some suggestions in this regard, but absence of uniform adoption by the states leads to patchy implementation. A centrally sponsored scheme would have to be initiated under the Ministry of Women and Child Development so that financial and logistical assistance required to improve prison infrastructure across the country is provided. Inter-ministerial coordination between the Ministry of Home Affairs, the National

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<sup>68</sup> United Nations Office on Drugs and Crime (UNODC), United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 2010

Commission for Protection of Child Rights (NCPCR), and prison departments would be the key.

#### 4. Institutionalizing Child Impact Assessments in Criminal Cases

One new concept suggested in this dissertation is the institutionalization of Child Impact Assessments (CIAs) in court procedures. Just as environmental impact assessments of development projects, CIAs would examine the likely physical, emotional, and psychological effects on a child if his or her primary caregiver ends up in jail.

This evaluation has to be done by trained child welfare workers and has to be mandatory prior to sentencing a mother. These reports have to inform bail judgments, sentence duration, eligibility for probation, and the possibility of non-custodial options. The Juvenile Justice Board or the Child Welfare Committee can be charged with this responsibility, thus institutionalizing the voice and rights of the child in the criminal process against adults.

#### 5. Bridging the Gap Between Indian Child Protection Legislation and the Prison System

Presently, there is a great gap between Indian child protection legislation and the prison system. While the Juvenile Justice Act, 2015 makes provisions for care and protection arrangements for children in situations of vulnerability, it does not have any direct provision for children living with their mothers who are in prison.

The Ministry of Women and Child Development needs to initiate the process of amending the Juvenile Justice Act with a new chapter or section on "Children Living in Custodial Environments." This will invoke automatic jurisdiction by Child Welfare Committees and provide regular monitoring and intervention. The state child protection units (SCPU) need to be provided access to prisons to make periodic assessments, suggest interventions, and document children's progress on a monthly basis.<sup>69</sup>

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<sup>69</sup> Ministry of Women and Child Development, Integrated Child Protection Scheme (ICPS): A Centrally Sponsored Scheme for Child Welfare (Government of India, 2014)

There should be a liaison officer in each central and district prison who acts as an interface link between prison authorities, child welfare agencies, and external civil society members. The officers can make medical visits feasible, education enrollment feasible, and even introduce the prisoners to their non- prison families.

#### **6. Creating Exit Strategies and Post-Prison Support Systems**

Children in prisons also experience a transition crisis at age six or upon release or transfer of the mother. Abrupt transition from known but restricted environment to new and unfamiliar institution or foster home environment can be severely traumatic.

The Indian policies should include strategies for exiting these children that prioritize continuity, emotional security, and reunification with the family

These can be:

- (a) Placement in the extended family under kinship care.
- (b) Foster care placements under the supervision of Child Welfare Committees.
- (c) Admission to child care institutions with inbuilt psychological support mechanisms.

Furthermore, post-release support for the mother and child must be institutionalized. This may include financial grants, temporary shelter, counselling, and education assistance. A Reintegration Assistance Program on the model of existing welfare schemes can be formulated and piloted in a few selected states.

#### **7. Compulsory Training and Sensitization of Prison Staff**

Well-being of children within prisons largely depends on the attitude, awareness, and behavior of prison authorities. To this end, compulsory training programs should thus be introduced across the prison institution in the following areas:

- (a) Child psychology and trauma-sensitive care.
- (b) Gender sensitivity and mothers' needs.

- (c) Constitutional and international legal obligations.
- (d) Emergency procedure to respond to child-related custodial crises.

The Bureau of Police Research and Development (BPRD) and National Institute of Criminology and Forensic Sciences may work together to develop standardized modules of training and certification courses, which are conducted every year and tracked through audit and compliance mechanisms.

#### 8. Utilization of Technology to Enhance Transparency and Monitoring

Technological resources can be great facilitators of transparency and accountability. The Ministry of Home Affairs will have to create a centralized online database of all children living in prisons throughout the nation, real-time updated. **This database must monitor:**

- (a) Age, gender, and length of stay.
- (b) Health status, vaccination, and nutritional screenings.
- (c) Education progress and social development indicators.

Access to the database should be provided to child welfare organizations, concerned NGOs, and monitoring bodies. In addition, CCTV surveillance of mother-child units, grievance redressal websites, and mobile helplines can act as a check against abuse, neglect, or rights violation.

#### 9. Encouraging Inter-Sectoral Cooperation

There can't be a single agency which can ensure the protection of the rights of children in prison. Thus, inter-sectoral coordination has to become the basis of policy in the future. Setting up of a National Coordination Committee involving members from:

- (a) Ministry of Home Affairs
- (b) Ministry of Women and Child Development
- (c) Judiciary and National Legal Services Authority (NALSA)
- (d) NCPDR and SCPCRs
- (e) Civil society and academia

The monitoring committee will organize quarterly meetings, monitor progress in implementation, recommend course correction, and carry out public outreach for raising awareness. These state-level committees are responsible for ensuring policy outreach and regional variation.

#### **10. Facilitating Civil Society and Community Participation**

Civil society has traditionally had a role to play in calling for prison reform and children's rights. The policy context needs to facilitate and promote partnership between prisons and NGOs with expertise in early childhood education, nutrition, trauma counselling, and vocational training.

Community-based approaches such as the "open prison" scheme may be made available for women with infants, so that mothers might enter community life and do their time in less restrictive settings. This humanizes the experience of prison and brings it in line with the ethical principle of restorative justice. In addition, public education campaigns, schools, and the media must normalize talk about children of prisoners in order to decrease the stigma that is affixed to them for life.





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**COMPLETION CERTIFICATE**

This is to certify that **Ms JENIFER VANLALHRUAII** with Enrollment Number **A0342624029**, a student of Programme **LLM (Constitutional Law)** Batch **2024-2025** Semester at **Amity Institute of Advanced Legal Studies** has pursued **Dissertation LWDS600** on topic **CONSTITUTIONAL RIGHTS OF CHILDREN LIVING WITH INCARCERATED MOTHER : A CRITICAL ANALYSIS OF WOMEN PRISONER AND THEIR CHILDREN** under my guidance from **07/01/2025** to **07/04/2025**. The Student has submitted **13** out of a total **13** Weekly Progress Reports. **Ms JENIFER VANLALHRUAII** has completed the project-related work and the work done is satisfactory.

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