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Educational Rights for Children of Imprisoned Mother

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This study looks at the rights to an education for kids whose moms are in prison, highlighting the opportunities and difficulties these kids encounter in the educational system. The study investigates how mother incarceration affects a child's ability to receive a high-quality education, highlighting how crucial it is to protect children's ability to learn and grow despite the unusual conditions they face. The study's main topics include the possible disruptions to a child's schooling, the possible social stigma they may encounter, and the psychological effects of having a parent in prison. The study also looks into current legislative frameworks and policy initiatives meant to safeguard these kids' access to education, pointing out areas that might need further effort and development. After a thorough examination of scholarly works, court records, and case studies, this research attempts to advance knowledge of the intricate relationship that exists between a parent's incarceration and a child's entitlement to an education. The rights of children whose mothers are incarcerated to education are the subject of a wide variety of interdisciplinary studies that illuminate the complex opportunities and problems that exist in this setting. The effects of maternal incarceration on these children's academic achievement have been thoroughly studied by academics, who have looked into factors like attendance at school, grades, and total educational attainment. Furthermore, there is a noticeable focus on comprehending children's psychological and emotional health, with research looking at the stress, stigma, and emotional complexity they may encounter as well as how these things affect their involvement in school. A common issue in the literature is the importance of parental involvement in a child's education as well as the challenges presented by incarceration, such as the communication gaps that exist between imprisoned mothers and their children. Policies and legal frameworks created Scholars evaluate the efficacy of current measures to safeguard these children's rights to an education and point out areas in need of improvement.

Keywords: *women, children, imprisoned, educational rights.*

INTRODUCTION

There is no denying the brutal reality that, once someone is jailed, the world doesn't care what happens to them behind bars. The human rights domain has expanded to include the area of prisoners' rights very recently. There is a lot of terrain to cover, even if the area has just recently begun to pick up steam.¹ Children of female inmates who are still imprisoned with them comprise a particularly vulnerable subset of the neglected prisoners. The right actions must be taken concerning the education of children whose moms are incarcerated. Children of women prisoners in Indian jails face several struggles that impede their access to education, according to a new report by the National Commission for Protection of Child Rights (NCPCR). The study surveys both children living in jails with their mothers as well as children in institutional care; and highlighted the gaps in physiological and emotional care towards children NCPCR is a statutory body under the Ministry of Women and Child Development. Their study involved surveying eight jails in Lucknow, Ghaziabad, Rajahmundry, Kadapa, Patna, Muzaffarpur, Mumbai, and Pune; and childcare institutes in Bihar, Maharashtra, Uttar Pradesh, and Andhra Pradesh. The findings suggest that access to and quality of education remains a paramount concern: 6% of the children interviewed said they had no means of schooling; whereas 85% were found to be enrolled in schools near where they lived, and 9% studied under the National Institute of Open Schooling. Out of those who go to schools, many actively face bullying from other students because of the stigma around their mothers being in jail. Children who lived with unique needs, like cerebral palsy who require special care, did not have access to institutions or training to assist with their education. The study further highlighted that 43% of the women interviewed did not know about the course material taught to children in prison creches and local Anganwadi groups; a similar proportion was also unaware of whether the course material

¹ Vivek Narayan Sharma, 'Prisoners' rights in India' *Times of India* (20 October 2018) <<https://timesofindia.indiatimes.com/blogs/lawtics/prisoners-rights-in-india/>> accessed 05 April 2024

was age-appropriate. Around 14% of women also stated that their children were not receiving instruction in their native languages.

Several women overall highlighted the challenges of communicating with their families while sentenced to jails outside their home state – making it harder for mothers to look after their children. Irregular meetings between mothers and children also remained a concern of the study: 60% of the survey respondents said that visits from their children were erratic, and 13% said they had never met their children while in prison. This is despite Supreme Court guidelines that mandate children can meet their mothers at least once a week. In reality, many say that the reason behind this non-compliance was that the children’s institutions (schools/homes/hostels) were far away from the prison.

The researchers put forth several recommendations to fix the problems: these include appointing psychologists and counselors to ensure care for children with special needs, and ensuring that children receive admissions in government-run schools near where their parent is housed. They also pushed for robust implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015, which is a legal intervention to protect the interests of vulnerable children. The researchers note that increased supervision of the Child Welfare Committee, formed under the JJ Act, could help safeguard children’s rights.

HISTORICAL RECOGNITION OF THE RIGHT

The creation of a committee to research and recommend jail improvements was something Lord Macaulay supported in 1835. Concerns including the upbringing of female criminals' children were covered by the All-India Jail Manual Committee, which the Indian government established following independence. Its objectives included providing nurseries for women's children and prisoner education programs that were required.²

One of the main provisions for prison reforms was provided in the seminal ruling of *R.D. Upadhyay v State of Andhra Pradesh*, which examined the circumstances surrounding children of prisoners. Specifically, this group of inmates mandated the inclusion of educational facilities

² Anil Bhuimali, *Law Enforcement and Human Rights* (Madhav Books 2013) 67-69

in the prison system.³ Many states have endeavoured to provide these kids with educational resources and hired teachers in the wake of this significant ruling.

The historical recognition of the education rights of children with incarcerated mothers has evolved through a combination of international agreements, national legislation, research initiatives, and community-driven programs. At the international level, the United Nations Convention on the Rights of the Child (CRC) established in 1989 has been instrumental in delineating the rights of children, including the right to education, and emphasizing the importance of considering the best interests of the child. Nationally, countries like the United States and the United Kingdom have enacted laws such as Every Student Succeeds Act (ESSA) and the Children Act 1989, respectively, which address the educational needs and welfare of children, including those with incarcerated parents. Legal decisions and ongoing research have further underscored the significance of recognizing and addressing the educational challenges faced by these children. Additionally, community-based programs and educational initiatives have emerged to provide tailored support and resources. While progress has been made, ongoing efforts are crucial to ensure the effective implementation of policies and the provision of necessary support services, thereby safeguarding the education rights of children with incarcerated mothers.

In recent years, there has been a growing awareness and advocacy for the education rights of children with incarcerated mothers. National and international efforts continue to address the unique challenges faced by these children. Some jurisdictions have implemented or revised legislation to protect better and support the educational well-being of these young individuals. In the United States, for example, ongoing developments related to the reauthorization and implementation of Every Student Succeeds Act (ESSA) and its impact on the educational stability of children with incarcerated parents may have significant implications. Nonprofit organizations, such as the Osborne Association and the Children of Incarcerated Parents International, have been active in research, awareness campaigns, and the development of programs designed to address the educational needs of these children.

³ *RD Upadhyay v State of AP* (2007) 15 SCC 360

Moreover, academic research and studies contribute to a deeper understanding of the complex dynamics surrounding the education rights of children with incarcerated mothers. Scholars investigate the effectiveness of existing policies, identify gaps in support systems, and propose recommendations for improvements. The intersectionality of these issues, considering factors such as socioeconomic status, race, and geography, is increasingly recognized in research endeavours, providing a more nuanced understanding of the challenges these children face in accessing quality education. Community-based initiatives and support programs are also making strides in filling the gaps left by systemic challenges. These programs often offer counselling, mentorship, and educational assistance to mitigate the adverse effects of parental incarceration on a child's educational journey. As public awareness grows, there is an increased emphasis on fostering inclusive educational environments that consider the well-being of the child and work towards breaking down societal stigmas associated with parental incarceration.

CONSTITUTIONAL EVOLUTION OF EDUCATION FOR CHILDREN OF IMPRISONED MOTHERS

The Indian Constitution's Article 21 guarantees everyone's right to life and personal freedom.⁴ The *Mohini Jain v State of Karnataka* landmark judgment broadened the definition of 'life and personal liberty' to encompass the realization of certain additional rights essential to an individual's complete development. One of the first cases to acknowledge the right to education as a fundamental component of Article 21 was this one.⁵

The right to education is also recognized by Article 28 of the Convention on the Rights of the Child⁶. For this reason, the provision mandates that State parties provide free and universal primary education to all children. The text also highlights how everyone should have equal access to opportunities to fulfill this right.⁷ But it wasn't until 2002 that the 86th Constitutional

⁴ Constitution of India 1950, art 21

⁵ *Mohini Jain v State of Karnataka* (1992) 3 SCC 666

⁶ Convention on the Rights of the Child 1989, art 28

⁷ Convention on the Rights of the Child 1989

Amendment was passed, adding Article 21A to Part III of the Indian Constitution. Free and compulsory education thus becomes a legally binding and enforceable fundamental right.⁸

GAPS IN POLICY OF EDUCATION FOR CHILDREN OF IMPRISONED MOTHERS

The right outlined in Article 21A is congruent with the Right to Education Act (RTE Act).⁹ The ruling of the Apex Court also highlights the importance of educating children whose moms are in prison. Although on the surface this is a laudable initiative, there are several conceptual and legal issues with its implementation.

The RTE Act clearly states that free and compulsory education must be provided to children between the ages of 6 and 14. According to RD Upadhyay's recommendations, no mother can continue to incarcerate a kid who has reached the age of six. Consequently, the RTE Act's mandated provision of educational facilities becomes a matter of 'choice' for the individual State governments. As part of the Directive Principles of State Policy, Article 45 of the Constitution states that the State will make every effort to educate children until they turn 14 years old.¹⁰

However, the unenforceable nature of the DPSPs creates a gap in policy concerning the education of children below six years residing in prisons. Even the Jail Manuals do not provide elementary education for such children.¹¹ The above observation makes it clear that the judgment is inconsistent with the constitutional amendments and the legislative developments in the application.

CHALLENGES TO EDUCATION OF CHILDREN WITH IMPRISONED MOTHERS:

Children's rights advocates continue to find that implementing the RD Upadhyay principles is of utmost importance. Because of the distribution of powers, jail upkeep is a state responsibility. Every prison in the nation has a different layout, size, standard of living, and infrastructure. Although several tier-3 cities and tiny rural regions have not even seen the light of day, some

⁸ Constitution of India 1950, art 21A

⁹ The Right of Children to Free and Compulsory Education Act 2009

¹⁰ Constitution of India 1950, art 45

¹¹ Subhash Chandra Singh, *Rights of Child* (Serials Publications 2007) 71-75

publications may praise observations from well-known city prisons where significant effort has been made.

When compared to the number of students one instructor is expected to teach, the prison systems that adopted the education model struggle with a shortage of instructional support. As a result, the goal of the policy change is defeated because less emphasis is placed on a certain child.¹²

IMPORTANCE OF EDUCATION FOR CHILDREN OF IMPRISONED MOTHERS

0 to 6 years is the foundational formative time of a child's life. When a child is born or brought up in captivity, shunned from the outside world, it is an underestimation, to say the least, that there is a massive psychological impact on their mental well-being. The vision of the Right to Education was reflected in the 86th Constitutional Amendment and the Right to Education Act.

It is important to note that the Right to Education does not refer to merely learning the alphabet or numbers. In the formative years from 0-6 years, education aims to enhance the scope for creative thinking and innovation and enable the children to engage and interact with their surroundings.

When the only world a child knows consists of broken walls and persons accused or convicted of dangerous offenses, it is redundant to expect any amount of good quality education to result in any kind of change or reform. Children are often unaware of the concept of a home or the social structure itself, that other children see daily.

It is crucial to distinguish education from literacy as the former undoubtedly has a broader interpretation. A comprehensive understanding of education must ideally encompass the right to play and leisure. It is a cardinal component of developing intellectual abilities, soft skills, social interaction, general knowledge, and emotional well-being.¹³

¹² Asha Bhandari, 'Women Prisoners and their Dependent Children: A Study of Jaipur and Jodhpur Central Jails in Rajasthan' (2016) 65(3) Social Bulletin 357, 367-370

¹³ David Malcolm, *Socio legal Perspectives on Rights of Child* (Cyber Tech Publications 2013) 9-10

CRITICISM OF THE QUALITY OF EDUCATION

The kind of education that is offered in Indian jails is merely a front and has no genuine beneficial effects. Unquestionably, the goal of the universal human right to education, as stated in Article 26 of the Universal Declaration of Human Rights, is not the mere fact that teachers teach the alphabet or numbers.¹⁴

If education is fully guaranteed, it is a resource that can be used as a potent weapon to address important national issues. However, it is a waste of time, money, and resources if the same is viewed as merely a command to be fulfilled because of a stronger legal precedent.

Based on the research paper, here are some suggestions to address the challenges faced by children of imprisoned mothers in accessing quality education:

SUGGESTIONS

- 1. Implement strict compliance with Supreme Court guidelines:** Ensure that children can meet their imprisoned mothers at least once a week, as mandated by the Supreme Court. Facilitate regular visitations by providing transportation or hosting meetings within the prison premises if the child's institution is located far away.
- 2. Strengthen the role of Child Welfare Committees:** Increase supervision and involvement of Child Welfare Committees formed under the Juvenile Justice (Care and Protection of Children) Act, 2015. These committees can play a crucial role in safeguarding the educational rights and overall well-being of children with incarcerated mothers.
- 3. Improve infrastructure and resources in prison schools/creches:** Allocate adequate funds and resources to establish and maintain educational facilities within prisons. Ensure the availability of age-appropriate curriculum, qualified teachers, and necessary educational materials for children of all ages, including those below 6 years old.

¹⁴ Universal Declaration of Human Rights 1948, art 26

- 4. Provide specialized support for children with special needs:** Appoint psychologists, counsellors, and trained professionals to cater to the educational and developmental needs of children with disabilities or special requirements, ensuring they receive appropriate care and support.
- 5. Facilitate admission in government schools near prisons:** Streamline the process of admitting children of imprisoned mothers into government-run schools located in proximity to the prisons, reducing logistical challenges and enabling better access to education.
- 6. Raise awareness and combat societal stigma:** Implement awareness campaigns and sensitization programs to combat the stigma and discrimination faced by children with incarcerated mothers, particularly in educational settings. Encourage inclusive and supportive environments for these children.
- 7. Conduct comprehensive research and data collection:** Encourage and fund further research to gather comprehensive data on the educational challenges faced by children of imprisoned mothers. This data can inform evidence-based policymaking and targeted interventions.
- 8. Foster collaboration between stakeholders:** Promote collaboration between government agencies, non-governmental organizations, educational institutions, and community groups to develop and implement holistic support programs for the education and overall well-being of these children.
- 9. Review and amend existing policies:** Critically evaluate and amend existing policies and legal frameworks to address gaps and inconsistencies, particularly concerning the education of children below 6 years of age residing in prisons.
- 10. Promote alternative educational models:** Explore and implement alternative educational models, such as distance learning, online courses, or mobile classrooms, to ensure continuity of education for children whose mothers are incarcerated in remote areas or facilities lacking adequate infrastructure.

Addressing the educational rights of children with imprisoned mothers requires a multi-faceted approach involving policy reforms, resource allocation, stakeholder collaboration, and a shift in societal attitudes. Prioritizing these suggestions can contribute to creating a more equitable and supportive environment for these children, promoting their overall development and breaking the cycle of marginalization.

CONCLUSION

The investment in improving access to the right to education is an essential public duty from which no State can absolve itself. Public investment in quality education directly impacts a country's financial growth and economic standing at the international level. With access to education under RTE restricted only to a privileged population, the country is trapping itself in a vicious cycle of social exclusion and discrimination, which will tremendously affect the social structure in the coming years.

It becomes an urgent need of the hour, undoubtedly, for India to prioritize universalization and uniformity of formal and non-formal education facilities in prisons for children in pursuance of the ratio of the Apex Court judgment. Moreover, civil society and independent researchers need to dive deeper into the study of the prison system to understand the intricate and inhumane issues and challenges faced by children below the age of 6 years.