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Female Incarceration and Dependent Children: Conditions, Challenges and Consequences

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Female incarceration has presented significant issues in recent years, yet it is overlooked, particularly regarding the conditions of prisons and the plight of children. Female prisoners face inadequate infrastructure and insufficient resources, congestion in jails, lack of gender-specific healthcare and facilities, and limited access to rehabilitation. These conditions lead to physical and mental health challenges, neglecting the reformative approach of the criminal law system. Simultaneously, the incarceration of mothers inappropriately impacts the children, causing emotional distress, social stigma, and economic hardships. Further, the lack of child-sensitive policies promotes the struggle and creates a legal gap. Therefore, the article provides an overview of the dual burden of poor conditions of female prisoners and the consequences for the children of incarcerated mothers. It includes the conditions of children staying inside prisons with their mothers and how inadequate infrastructure for female prisoners directly provides a poor environment for children to grow and disvalues the rights and welfare of the dependent children.

Keywords: *female incarceration, dependent children, prisons, conditions.*

INTRODUCTION

The rising rate of female incarceration is a growing global concern, often accompanied by issues and challenges. Women prisoners represent marginalized groups within the criminal law system, living in poor conditions and facing healthcare challenges that are rarely discussed. These women prisoners often have diseases due to the unhygienic washrooms and poor clothing, leading to unhealthy bodies that affect pregnancy and breastfeeding deteriorating the health of infants. The facilities for expectant mothers, childbirth, and postpartum activities are insufficient. The report¹ suggests women were not even given sanitary napkins in more than 40% of prisons. Moreover, the children of these women irrespective of the fact that they are staying within prisons or living outside, are silent sufferers. In certain states or towns, NGOs are tackling these issues; however, other cities or prisons are yet under inhumane conditions for the development of these children and the rehabilitation and reintegration of prisoners in society. However, it is a huge issue that is neglected by the law as the implementation of laws is weak and by the public who are unaware of this issue.

UNDERSTANDING THE CONDITION OF FEMALE PRISONERS

Before analyzing the condition of children inside the prisons, staying with their mothers, we must have an idea of the condition of female prisoners in general. According to the NCRB 2021 report², 77.1% of the total prison population were undertrial prisoners. Women make up a small minority of India's prisoners, out of more than five and a half lakh prisoners, 22,918 are women which is 4.1% of the total prison population, and 1537 of these women were accompanied by their children in prisons. There are currently 34 women's prisons in India³.

The number of female prisoners increased by 11.7% between 2014 and 2019, however, female prisoners make up a lesser proportion of the prisoners in India, therefore, the facilities, infrastructure, and necessities are not provided. As per the report of NCRB 2021⁴, 22,918 female

¹ Amitava Roy Committee, *Prison Reforms: Recommendations on Overcrowding, Staff Inadequacy, and Violence in Indian Prisons* (2018)

² National Crime Records Bureau, *Prison Statistics India* (2021)

³ Ministry of Women and Child Development, *Report on 'Women in Prisons' launched by the Ministry of Women and Child Development* (2018)

⁴ *Ibid*

inmates lived in prisons built for only 6,767 prisoners. As of 2022⁵, India's prisons were 131% occupied, with 5,73,220 inmates against a capacity of 4,36,266. 75.7% of the total inmate population were undertrial prisoners. The majority of women prisoners are confined in women's enclosures inside male prisons, as per the committee report⁶. They often suffer from overcrowding, lack basic commodities that male prisoners have easier access to, and are under-represented in policies. Only 18% of female prisoners get exclusive prison facilities and the rest lack basic prison facilities. No separate medical ward for female inmates. Gynaecologists and Pediatricians do not visit prisons to treat women and their children. According to the prison manual⁷, sterilized sanitary napkins should be issued to applicants as per their requirement, however, it is not followed by a maximum number of prisons in India. There is no gender-specific training for the jailers. Prison administration needs a lot of expertise to implement the guidelines issued by the manual.

Furthermore, the majority of women prisoners face custodial sexual abuse and often suffer in silence. According to the NCRB data⁸, it is reported of total 275 custodial rape cases during the years from 2017 to 2022. These cases involve sexual violence and abuse against women conducted by police personnel, public servants, or staff from prison administration. Uttar Pradesh reported with highest number of cases with 92 incidents and Madhya Pradesh with 43 cases. A significant concern is that 75% of female wards in Indian prisons share kitchens and common facilities with male wards. This shared arrangement can potentially lead to safety and privacy issues for female inmates, especially given the gender dynamics within prison environments.

AFTERMATH OF INCARCERATION

Since the traditional judicial system is so slow, children are the ones who suffer the most from the trauma that begins with the arrest and the protracted legal proceedings. As per rule⁹,

⁵ Amitava Roy Committee, *Prison Reforms: Recommendations on Overcrowding, Staff Inadequacy, and Violence in Indian Prisons* (2018)

⁶ *Ibid*

⁷ *Ibid*

⁸ National Crime Records Bureau, *Prison Statistics India* (2022)

⁹ *Ibid*

children below 6 years of age can stay with their mothers inside the prison to nurture the bond between the mother and her child or to breastfeed, taking into account the beneficial interest of the child. After age 6, the child is sent to family members, foster care, or the Child Care Institution (CCI). The children above the age of 6 years, if no family member is available to look after them, are sent to a home run by the Social Welfare Department.

The prison environment does not support children's normal growth and development. Many are born there and never have a normal family life and their socialization patterns are negatively impacted by their incarceration. The idea of a home as we understand, is foreign to them. Boys raised exclusively among women in the female ward may occasionally be heard speaking in the female gender.

The aftermath of parental incarceration significantly impacts children, families, and society. Here's an analysis of its effects across different dimensions on children:

1. Psychological and Emotional Impact on Children: Children of incarcerated parents suffer from unexplained mental and psychological issues such as anti-social behaviours, loneliness, depression, and childhood trauma. One meta-analysis of 40 studies on children of incarcerated parents found that antisocial behaviours were present more consistently than any other factors, including mental health issues and drug use¹⁰. Antisocial behaviour resulting from parental incarceration may limit a child's resilience in the face of other negative experiences, which could then compound the effects of exposure to other issues.¹¹ They often have uncontrollable aggression and attachment issues. These children have low self-esteem, emotional dysregulation, and heightened trauma as witnessing arrests.

When the child turns six and has to leave the prison and live somewhere else, they also have to deal with an abrupt change. Up to the age of six, many children stay with their mothers in overcrowded, underfunded jails, after that, they are placed in care facilities, which frequently

¹⁰ Joseph Murray et. al., 'Children's Antisocial Behavior, Mental Health, Drug Use, and Educational Performance After Parental Incarceration: A Systematic Review and Meta-Analysis' (2012) 138(2) Psychological Bulletin <<https://doi.org/10.1037/a0026407>> accessed 22 November 2024

¹¹ Eric Martin, 'Hidden Consequences: The Impact of Incarceration on Dependent Children' (*National Institute of Justice Journal*, 01 March 2017) <<https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>> accessed 22 November 2024

results in trauma and separation anxiety. These issues are closely connected due to the lack of supportive systems in many correctional facilities. Some of the common impacts are mental health issues, guilt and shame, stress and trauma, and identity struggles.

2. Social Stigma: In schools, they face issues like bullying, ragging, and isolation. They frequently struggle to manage their emotions, leading to bad relationships in their personal and social lives. They suffer from stigma and discrimination that leads to alienation. The society perceives them as captives or future criminals. They believe that there is an intergenerational transmission of criminal behaviour and the kids of incarcerated parents, especially those who have stayed with their mothers in prisons or were born in prisons, have a higher risk of engaging in criminal activities. Society views them as a threat and considers them as criminal-blooded or 'crime is in his genes'. Studies highlight the significant stigma and discrimination these children face. They are frequently stereotyped as future criminals, leading to isolation and emotional distress. For instance, children might not disclose the incarceration of their parents to avoid societal judgment, limiting their social interactions and development. Schools and communities often fail to provide adequate emotional support, expanding their trauma.

3. Delinquency: Children may also be adversely affected by parental incarceration. Research on parental incarceration and delinquent behaviour shows a higher risk pattern of delinquent behaviour among youth whose parents are confined¹². Some research indicates that the effects of mother incarceration are more negative¹³. It has been observed that children of convicted mothers are two and a half times more likely to be involved in criminal activities than those of convicted fathers.¹⁴ Many incarcerated mothers come from economically challenged family backgrounds where poverty and financial instability drive them to commit offences such as theft or other similar offences as a means of survival. In such households, mothers being the primary caregivers, have a significant influence on the lives of dependent children. Growing up in such an environment, children internalize the actions of their mothers as a solution to poverty.

¹² *Ibid*

¹³ Joyce A. Arditti, 'Child Trauma Within the Context of Parental Incarceration: A Family Process Perspective' (2012) 4(3) *Journal of Family Theory and Review* <<https://onlinelibrary.wiley.com/doi/10.1111/j.1756-2589.2012.00128.x>> accessed 22 November 2024

¹⁴ Danielle H. Dallaire, 'Incarcerated Mothers and Fathers: A Comparison of Risks for Children and Families' (2007) 56(5) *Family Relations* <<https://doi.org/10.1111/j.1741-3729.2007.00472.x>> accessed 22 November 2024

When these mothers are incarcerated and if their children are left alone without emotional and financial support, they end up adopting similar means of survival and engaging in unlawful activities to cope with economic hardships. It often becomes an intergenerational act of survival and continues the chain of crime.

4. Economic Hardship and Education: Economic hardship is one of the most significant challenges faced by children with incarcerated parents. The loss of family income forces children into difficult circumstances including inadequate housing, food and shelter, and limited access to education¹⁵ and healthcare. In India, women are marginalized. These women are incapable of assuring surety bonds for petty offences, often ending up in prisons for years and children bear the economic strain. This exposes them to exploitative labour conditions and in some cases, they end up in illegal offences such as opting for sexual activities to earn money. Low family income or non-financial support leads to loss of education. Regardless of the laws stating that education is free and compulsory for children, this is not implemented for these children because they are simply not so represented properly.

LEGAL LANDSCAPE: NATIONAL AND INTERNATIONAL PERSPECTIVE

Prison is a subject under List-II of the seventh schedule in the constitution that gives power to the State Government to make laws on prison and its administration. However, the Ministry of Home Affairs (MHA) provides regular guidance and advice to States and UTs on various issues concerning prison administration. Several laws and guidelines ensure the treatment of female prisoners and the welfare of their children including the Juvenile Justice Act, of 2015, the Right to Education Act, of 2009, the Convention of the Rights of the Child, and so forth. Here are some of the provisions and their significance:

¹⁵ National Commission for Protection of Child Rights, *Education Status of Children of Women Prisoners in India* (2022)

Constitutional Provisions -

Article 15(3)¹⁶: The state can make special provisions for women and children. As mentioned earlier the condition of female prisoners is worse than that of male prisoners. The majority of the time, they were kept in male prisons.

Article 21¹⁷: The right to life and personal liberty extends to providing humane conditions for female prisoners and establishing an environment for the small children who are staying with their mothers in prison.

Article 39¹⁸: Certain Principles emphasizing the protection of children and ensuring their development in safe conditions. The children staying with their mothers in prison must have a healthy environment to grow and have opportunities to develop. It also complies that children above the age of 6 years are sent to care houses or to their families or any other place to live by the Social Welfare Department to protect them from abandonment and exploitation.

Article 45¹⁹: The state shall endeavour to provide early childhood care and education until the completion of 6 years of age.

Article 46²⁰: The state shall promote with special care the educational and economic interests of weaker sections.

Statutory Provisions -

The Prisons Act 1894²¹: It was an act made during British rule. It was made to govern the prison administration. It plays a crucial role in addressing gender-specific challenges and safeguarding the welfare of the children of female prisoners. It contains the laws for the procedures and administration of incarceration. It mainly focuses on the retributive theory of punishment. It doesn't address the exclusive conditions and needs of female prisoners and their children.

¹⁶ Constitution of India 1950, art 15(3)

¹⁷ Constitution of India 1950, art 21

¹⁸ Constitution of India 1950, art 39

¹⁹ Constitution of India 1950, art 45

²⁰ Constitution of India 1950, art 46

²¹ The Prisons Act 1894

Model Prison Manual 2016²² -

It provided all the necessary guidelines including the following:

- **Diet and Healthcare:** Scales of diet for children shall be decided to keep in view the calorific requirements of growing children as per medical norms. Adequate health facilities shall be provided in collaboration with community health services.
- **Education:** Proper education and recreational opportunities shall be provided to the children. The availability of creches and nursery schools must be attached to the prison.
- **Childbirth and Post-natal care:** Suitable arrangements must be present or temporary release if necessary to avail hospital. It is stated in the guidelines that the prison shall not be mentioned as the location of birth of a newborn and all other essential certificates shall be made of that child.
- **Welfare of Children:** If possible, a suitable environment shall be provided for the children. The board of visitors shall inspect the facilities regularly.

Model Prisons and Correctional Services Act 2023: To review the British-made laws, the Model Prisons and Correctional Services Act was formed in 2023 and forwarded to all States and UTs. The Ministry of Home Affairs through the report of Bureau of Police Research and Development by consulting state prison administration and correctional administration. Unlike colonial laws, it focused on rehabilitation and reformation of prisoners. It also paid attention to the special needs of female prisoners and their dependent children. It ensured the following:

- **Separate Accommodation for Women Prisoners²³:** The ratio of female prisoners is lower than that of male prisoners, therefore, there was insufficient housing and facilities for female inmates. It is also concerned to ensure their safety, privacy, and well-being. This separation aims to create a conducive environment for rehabilitation and addresses the specific needs of women in custody. It mentioned separate enclosures for women and transgender.

²² Bureau of Police Research and Development, *Model Prison Manual For The Superintendence and Management Of Prisons In India* (Ministry of Home Affairs 2003)

²³ *Ibid*

- **Provisions for Pregnant Women and Female inmates who are mothers with dependent Children²⁴:** The prison manual of 2016, gave various guidelines to follow for the special needs and concerns of pregnant mothers and addressed post-natal challenges. However, these were just guidelines whereas the 2023 manual seeks to have a comprehensive approach towards the implementation. This act included measures to support them including medical care, rehabilitation and hygiene, and so forth.
- **Grievance Redressal Mechanisms:** It enacted for the prisoners especially women to voice their concerns related to treatment and living conditions of the enclosures. It ensures the issues are addressed properly.

International Provisions -

Several international human rights address the treatment of female prisoners and their dependent children. Some of them are the following:

International Covenant on Civil and Political Rights (ICCPR)²⁵ Ensures the right to be treated with humanity and dignity.

Bangkok Rules²⁶: These rules provide guidelines to address the specific needs of female prisoners, including pregnant women, nursing mothers, and those with dependent children.

Convention on the Rights of the Child (CRC)²⁷: Highlight the rights of children, including those affected by parental imprisonment.

Nelson Mandela Rules²⁸: General guidelines for the humane treatment of prisoners such as the separation of female prisoners from male prisoners.

²⁴ *Ibid*

²⁵ International Covenant on Civil and Political Rights 1966, art 10.

²⁶ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) 2010

²⁷ Convention on the Rights of the Child 1989

²⁸ United Nations Standard Minimum Rules for the Treatment of Prisoners 2015

LEGAL PRECEDENTS

Re-Inhuman Conditions Case: Based on the 2013 case of Re-Inhuman Conditions in 1382 prisons²⁹, the PIL exposed the poor condition of the prisons such as overcrowding, unnatural deaths, and personnel deficiencies in Indian prisons. In 2018, a committee chaired by Justice Amitava Roy made recommendations on 17 different aspects including inadequacy of prison staff. In addition, the court has added 3 more issues: medical facilities, inmate vocational training, information technology infrastructure of jail premises for assisting court processes, and visitation rights. Moreover, the bench directed union and state governments to investigate and evaluate provisions for death row inmates, transgender inmates, women, and children.

RD Upadhyay v State of AP & Ors: The rights of children residing with their mothers in prison were the main focus of this case³⁰. It was declared that these children who are staying inside prisons should have access to food, clothing, housing, healthcare, and other necessities including medical and recreational opportunities. Children below 3 years of age may attend a creche and those between three to six years of age must be cared for in the nursery. These creches and nurseries should be prison administration off campus. Moreover, it also made it clear that these children should be treated as inmates. It mandated age-appropriate relocation after six years, non-stigmatized birth registration, and, if possible, birthing outside of prisons. It was encouraged to have speedy trials for women prisoners, and pregnant inmates were to receive special treatment. Human dignity and child welfare were given top priority in the ruling.

ROLE OF NGOS

Various NGOs are working for the welfare of the children of incarcerated parents. Here are the following:

Prayas: Prayas is an initiative by the Tata Institute of Social Sciences (TISS)³¹. It aims to support economically vulnerable communities, particularly prisoners, their families, and children affected by incarceration. It provides legal aid, facilitating the rehabilitation and reintegration of

²⁹ *Re-Inhuman Conditions In 1382 Prisons* (2016) WP (CIVIL) NO.406/2013

³⁰ *R.D Upadhyay v State of Andhra Pradesh* (1998) 5 SCC 696

³¹ Bureau of Police Research and Development (n 22)

prisoners into society. It also addresses the socio-economic challenges faced by families, especially children. It engages in activities such as vocational training, counseling, education support for children, and advocacy for systemic reforms. Therefore, it plays a crucial role in reducing stigma and breaking poverty and crime.

Indian Vision Foundation: The Indian Vision Foundation³² was founded by Dr. Kiran Bedi in 1994. It focuses on police and prison reforms, community development, and rehabilitation of marginalized groups especially children of incarcerated parents. The foundation works to empower such children by providing quality education, counseling, and shelter, ensuring they have a stable environment to live and grow. Over the years, it has significantly influenced prison reform policies and raised awareness about the rights and welfare of incarceration of individuals and their families.

In an interview³³ with CIC, Monica Dhawan and Renu Nag indicated that they also run five programs with incarcerated populations. Two are specifically dedicated to children of incarcerated caregivers, one of which focuses on early childhood care and development of children below the age of six who are in prison with their mothers. The other supports children outside the prison, including those who leave their mothers in prison after they turn six years of age. India Vision Foundation also continues to run the Tihar creche and nursery. Dhawan said the focus of these programs is to nurture children and give them a real shot at a future, and to prevent them from being forced to enter pipelines of criminality.³⁴

PAAR: Prison Aid and Action Research (PAAR)³⁵ is a dedicated organization in India working for the welfare of incarcerated individuals and their families. It aims to reform the criminal justice system by focusing on human rights, rehabilitation, and reintegration of incarcerated individuals in society. The initiative includes the education of children of incarcerated parents, providing access to skill development programs and advocating for policies that improve the conditions of incarcerated parents, especially mothers with their young children staying in the

³² *Ibid*

³³ *Ibid*

³⁴ Stuti Shah, *Children of Incarcerated Caregivers* (2024)

³⁵ *Ibid*

prisons. Additionally, it partners with other NGOs to implement social welfare schemes effectively.

RECOMMENDATIONS AND SUGGESTIONS

1. Public Awareness: The lack of awareness about the plight of children with incarcerated parents creates stigma and neglect in society. Therefore, it is necessary to teach society including adults, teenagers as well as children about the rights and needs of these children who are the silent victims of incarceration. Awareness campaigns, use of media, or other community programs must highlight and spread the issues to the general public to empathize with these children and sensitize the issue in society. Community engagement by encouraging local communities to support and volunteer to create donations and funds.

2. Legal Recognition Based on Certain Divisions: The Article³⁶ divides the children into certain categories by taking inspiration, it is recommended to ensure their rights and welfare based on these:

- **Below 6 Years (Staying In/Out of Prison)**

Improve living conditions such as hygiene, healthcare, education, and recreational activities. The women must receive extra care and medications based on their needs or during pregnancy or postpartum so that the infant below 6 years of age, is receiving the hygiene. Ones living outside, ensure the safety and support of family environments or childcare institutions through legal regulations and monitoring mechanisms. Only a few states and union territories (Goa, Delhi, and Puducherry) allow female prisoners to meet their children without barriers like bars or glass separation. In many cases, these barriers hinder family connections, which are crucial for the well-being of both mothers and their children.

- **Above 6 Years (Staying with Families/Sent to shelter Homes) -**

³⁶ S. Shweta Sai, 'Rights Of Children Of Incarcerated Parents' (2021) 6(8) Indian Journal Of Law, Polity And Administration
<https://www.ijlpa.com/files/ugd/5f2b28_499061a92a584e90b334d32555baa899.pdf?index=true> accessed 22 November 2024

Children staying with families: Implementation of monitoring mechanisms must be present to ensure children staying with families are not exploited or neglected.

Children sent to child care homes: The children must be given in safe hands and safe environments, with NGOs, extended families, or foster care, after thorough research of the family background.

Missing Child Schemes: This category is uncommon and has almost less data compared to other categories. It is difficult to predict the reality of missing children of incarcerated parents. It is recommended that law and social schemes need to cover this aspect as well.

3. Availability of Resources Inside Prisons: The 2016 act³⁷ has discussed various guidelines and regulations that ensure and protect the rights of children with incarcerated parents. However, it has been reported that the insufficiency of resources. The children must have access to healthcare and nutrition as well as child development material. Moreover, provide prison pre-schooling for children under 6 years and encourage partnerships with educational institutions or NGOs for quality education.

4. Infrastructure Development: There is inadequate infrastructure both for the female prisoners and care of children especially for the ones staying inside prisons with their mothers. It is recommended to build or upgrade facilities with modern amenities. It was also mentioned in the report that, unlike men, women have no access to libraries and other developing facilities. Separate accommodations for children and mothers must be present, preventing exposure to adverse prison conditions and the environment. Tihar jail, jail No. 6 has a separate barrack for mothers and children. Many prisons have no separate barracks for mothers and children with privacy. No creches and daycare centres for children.

5. Resolve the Undertrial Crisis: Undertrial is one of the significant issues that need to be talked about. A significant percentage of prisoners are undertrials, leading to prolonged separation and suffering for their children. Speedy trials involving parents of young children, upgrade bail reforms as it was already discussed how women prisoners are confined for petty crimes and

³⁷ Bureau of Police Research and Development (n 22)

have no finance for bail, and monitoring mechanisms such as periodic reviews on undertrial cases to avoid unnecessary delays and establish legal aid for the incarcerated mothers involved in petty crimes.

6. Implementation of the Laws: Despite the presence of laws in our country, implementation is often weak at times. Every other article addressing this issue would surely highlight the aspect of implementation³⁸. Theoretically, all the laws discussed cover the wider range of issues of female prisoners and their children, however, there are insufficient efforts made by the legal system to enforce these laws. Female prisoners and their children are still exploited and their voices are unheard. A reformatory system must give access to its prisoners to education and develop their wisdom and their children, who are often overlooked by society, must have every right to not just survive but live with dignity. It must ensure hygienic conditions for women and children, regular healthcare services, and other resources that are required for women must be provided.

CONCLUSION

In conclusion, the article highlighted the conditions of female prisoners and the effects of their incarceration on their children. In India, women in prisons are not represented properly and hence the efforts to create sufficient facilities for them are low. The poor condition of female enclosures directly impacts the children staying with their mothers in prisons even if proper wards are made for children, the poor condition of female prisons will affect the child. Social institutions and NGOs that are working on this issue are doing commendable work which reduces some burden on the legal system however a strong implementation of laws is needed. Additionally, the purpose of this article is to provide an insight into the circumstances of female prisoners inside the prisons, not to terminate the punishment of every other female with young children. It proposes to be aware of the conditions of female incarceration and the plight of children with incarcerated parents.

³⁸ Prabhanu Kumar Das and Kapil Joshi, 'Mothers and children in prison: NGOs help, but better implementation of policies needed' *The Leaflet* (14 December 2023) <<https://theleaflet.in/criminal-justice/mothers-and-children-in-prison-ngos-help-but-better-implementation-of-policies-needed>> accessed 22 November 2024