

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 3

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any **suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Behind Bars and Beyond: A Criminological Perspective on the Lives of Children Living with Incarcerated Mothers

NIDHI KUMARI* AND DR. SONY KUNJAPPAN**

ABSTRACT

This paper examines, through a criminological lens, the lives of children who reside in Indian prisons with their incarcerated mothers or who are otherwise affected by maternal imprisonment. Drawing on feminist criminology, attachment theory, labelling theory, and structural violence theory, it characterises these children as secondary victims who suffer institutional neglect, social stigmatisation, and developmental deprivation despite having committed no offence. The paper analyses the constitutional, statutory, and judicial framework in India, including Article 21, the Juvenile Justice (Care and Protection of Children) Act, 2015, the Model Prison Manual, and the directions in R.D. Upadhyay v. State of Andhra Pradesh, alongside international instruments such as the Convention on the Rights of the Child and the Bangkok Rules. It reviews comparative best practices from Thailand, South Africa, the United Kingdom, and the United States, and argues for a shift towards child-sensitive justice through non-custodial alternatives, child-friendly prison infrastructure, and structured post-release support.

Keywords: *Incarcerated mothers, children of prisoners, feminist criminology, attachment theory, structural violence, secondary victimisation, prison reform, child rights, non-custodial measures, Bangkok Rules.*

I. INTRODUCTION

The imprisonment of women in India has shown a steadily growing trend over the last two decades, a development that brings with it distinctive socio-legal challenges. According to the National Crime Records Bureau, a substantial number of women prisoners were accompanied by more than a thousand children residing in Indian jails.¹ These children, having committed no crime, are nonetheless subject to the same institutional and spatial constraints as their mothers. Their early lives are shaped by the carceral environment, which is characterised by sensory

* Author is a PhD Scholar at the Department of Studies in Social Management, Central University of Gujarat, Gujarat, India.

** Author is a Professor and Head of Department at the Department of Studies in Social Management, Central University of Gujarat, Gujarat, India.

¹ NATIONAL CRIME RECORDS BUREAU, PRISON STATISTICS INDIA 2022 (2023) (India).

deprivation, emotional insecurity, inadequate nutrition, restricted education, and exposure to violence or neglect.²

Children who reside in prison with their mothers, or who are otherwise affected by their mother's incarceration, are defined not only by separation from family but also by institutional abandonment and social stigmatisation. Indian prisons are designed principally to hold male offenders and are therefore ill-prepared to accommodate women inmates, still less their children. While policy instruments such as the Model Prison Manual³ and Supreme Court guidelines envisage basic facilities such as education, health care, medical treatment, and play spaces for these children, practice remains uneven across states. In many circumstances, such children remain with their mothers until the age of six and are then typically institutionalised or sent to live with extended relatives, causing breakdowns in care and attachment.⁴

From a criminological perspective, these children are a classic instance of secondary victims, harmed as a consequence of their mother's imprisonment although they have committed no offence themselves. Although the Juvenile Justice (Care and Protection of Children) Act, 2015 provides for alternative care of children without parental care, a substantial policy gap persists in respect of this group.⁵ Their legal status is frequently unclear: they are neither *de jure* wards of the state nor autonomous persons with enforceable rights. This produces a grey area in which their welfare depends on the discretion of prison officials rather than on settled legal protection.⁶ The situation is compounded by the fact that undertrial prisoners constitute the overwhelming majority of the female prison population.⁷ Delays in the disposal of cases keep children in jail well beyond the statutory limit of six years, at which point they are transferred to juvenile homes or separated from their mothers and placed with extended family members. These transitions may generate emotional trauma and caregiving gaps, perpetuating cycles of psychological instability and social marginalisation.

Studies indicate that early life experiences in prison are associated with attachment difficulties, delayed cognitive development, behavioural problems, and an increased risk of school dropout following release.⁸ Children may internalise shame, fear, and confusion about their

² Shaista Bano, *Lives Behind Bars: Children Living with Incarcerated Mothers in Indian Prisons*, 12 J. SOC. JUST. STUD. 45 (2018).

³ MINISTRY OF HOME AFFAIRS, *MODEL PRISON MANUAL FOR THE SUPERINTENDENCE AND MANAGEMENT OF PRISONS IN INDIA* (2016) (India).

⁴ HUMAN RIGHTS WATCH, *INDIA: PRISONS NOT FIT FOR CHILDREN* (2018).

⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, Acts of Parliament, 2016 (India).

⁶ HUMAN RIGHTS WATCH, *supra* note 4.

⁷ NATIONAL CRIME RECORDS BUREAU, *PRISON STATISTICS INDIA 2023* (2024) (India).

⁸ OLIVER ROBERTSON, *THE IMPACT OF PARENTAL IMPRISONMENT ON CHILDREN* (Quaker United Nations Office 2007).

circumstances. In India, these effects are intensified by the twin burden of poverty and social shame, particularly for children from poor backgrounds or minority communities who are already disproportionately represented in the criminal justice system.⁹ In criminological terms, such children constitute a population located at the intersection of state neglect, institutional injustice, and social exclusion.

Much of the existing scholarship adopts a predominantly legal approach, with limited attention to structural interconnection or criminological significance. A detailed theoretical exploration that situates this population within feminist criminology, strain theory, and labelling theory is essential not only to understand their vulnerabilities but also to interrogate the corrective basis of the carceral system. There is a need to examine these children's lives through a criminological perspective that integrates strain, stigma, and gendered marginalisation. This approach illuminates the broader social processes and institutional structures that produce their marginalisation and directs attention towards systemic change.

II. LITERATURE REVIEW

Much of the existing scholarship has focused on prison structures designed mainly around male inmates. Carlen argues that women in prison undergo a double punishment: first, through imprisonment itself, and second, through the loss or disruption of the maternal role.¹⁰ This affects the children they bring with them and denies those children a nurturing environment.

Children of prisoners tend to experience social stigma, followed by social segregation and emotional uncertainty. Goffman's work on stigma remains instructive here, indicating that these children are labelled by association and endure a silent punishment beyond the prison walls.¹¹ Countries such as Germany and Sweden offer prison nurseries and community corrections for mothers, reducing harm to children.¹² These models hold promise and challenge India's overreliance on custodial measures in preference to rehabilitative possibilities.

Glaze and Maruschak, in their report on parents in prison and their minor children, provide demographic and behavioural data on confined parents and their children, highlighting the heightened risk of criminalisation for affected children.¹³ Arditti, in her study of parental incarceration and the family, discusses the familial and psychological disruption created by

⁹ Sahana Ghosh, *Women and Children in Prisons in India: A Human Rights Perspective*, 48 *INDIAN J. CRIMINOLOGY* 35 (2020).

¹⁰ PAT CARLEN, *WOMEN AND PUNISHMENT: THE STRUGGLE FOR JUSTICE* (2002).

¹¹ ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* (1963).

¹² Chandra Bozelko, *When Babies Do Time with Mom: Prison Nursery Programs Can Work*, *Wash. Post* (2015).

¹³ LAUREN E. GLAZE & LAURA M. MARUSCHAK, *PARENTS IN PRISON AND THEIR MINOR CHILDREN* (Bureau of Justice Statistics Special Report 2008).

parental incarceration, drawing on the concept of ambiguous loss, whereby children experience emotional absence despite physical proximity to the imprisoned parent.¹⁴

Nair examines the institutional neglect and bureaucratic invisibility of children who remain with their mothers in Indian prisons, identifying gaps in the law and weak mechanisms of accountability in state institutions.¹⁵ Minson, in a United Kingdom study, examines how the children of incarcerated mothers experience social exclusion, schooling difficulties, and emotional stress, and her work is significant in theorising the long-term effects of maternal absence resulting from imprisonment.¹⁶ Shankardass, in her study of women inside prisons in India, emphasises that the imprisonment of women has a disproportionate impact on children, owing to the mother's caregiving function and the absence of provisions in carceral policy for their welfare.¹⁷

Farmer frames structural violence as the means by which institutions such as prisons sustain harm against marginalised populations, including children of prisoners, through understaffing and underfunding.¹⁸ Despite growing awareness of the problem, there remains a marked shortage of longitudinal research tracking children after release. Sarkar underscores the pressing need for high-quality data to inform policy interventions and to assess the long-term consequences of carceral childhoods.¹⁹

Notwithstanding the available body of research, gaps persist in the literature concerning the long-term outcomes of children who have grown up in prison with their mothers. Research on the efficacy of current policies and rehabilitation programmes is also lacking. Further research is warranted to explore children's own perspectives, evaluate the adequacy of existing support systems, and develop evidence-based interventions tailored to their particular needs.

III. THEORETICAL FRAMEWORK

A. Feminist criminology

Feminist criminology provides a theoretical framework for analysing how gendered power relations shape both the imprisonment of women and the institutional abandonment of their

¹⁴ JOYCE A. ARDITTI, *PARENTAL INCARCERATION AND THE FAMILY: PSYCHOLOGICAL AND SOCIAL EFFECTS OF IMPRISONMENT ON CHILDREN, PARENTS, AND CAREGIVERS* (2012).

¹⁵ PREETI NAIR, *CHILDREN OF WOMEN PRISONERS IN INDIA: INSTITUTIONAL NEGLECT AND SYSTEMIC BARRIERS* (Child Rights and You Working Paper Series 2008).

¹⁶ SHONA MINSON, *THE IMPACT OF MATERNAL IMPRISONMENT ON CHILDREN: A SUMMARY OF RESEARCH EVIDENCE* (University of Oxford 2017).

¹⁷ RANI DHAVAN SHANKARDASS, *OF WOMEN INSIDE: PRISON VOICES FROM INDIA* (2011).

¹⁸ Paul Farmer, *An Anthropology of Structural Violence*, 45 *CURRENT ANTHROPOLOGY* 305 (2004).

¹⁹ Sucharita Sarkar, *Invisible Children: A Policy Analysis on the Children of Incarcerated Women in India*, 56 *SOC. WORK REV.* 75 (2019).

children. In contrast to mainstream criminological theories that treat offenders as gender-neutral, feminist criminology emphasises that women tend to enter the criminal justice system as a result of structural injustices such as poverty, domestic violence, and the absence of social support.²⁰ These circumstances are aggravated where mothers are sole caregivers, because confinement severs or constrains the mother-child bond within prison conditions. The theory illuminates how a penal system built around male norms neglects women's caregiving roles, thereby punishing both mother and child.

B. Attachment theory

Attachment theory, as framed by John Bowlby, emphasises the emotional bond between caregiver and child as a key factor in psychological development.²¹ Secure early childhood attachments foster resilience, trust, and social competence. Within the prison setting, however, where children reside with their mothers, this attachment is destabilised by constant surveillance and the absence of stimulating environments. Moreover, when a child reaches the age limit for residing in prison, typically six years in India, the sudden separation from the mother may produce a disorganised attachment pattern, causing emotional disruption and behavioural difficulties.

C. Labelling theory

Labelling theory, advanced by Howard Becker, suggests that individuals internalise the labels society places upon them, and that these labels may shape their self-image and behaviour.²² Although the children of imprisoned mothers are not offenders, they tend to be stigmatised by association with the carceral environment. Secondary deviance, or the construction of such children as problem children, may result in social isolation, educational discrimination, and diminished self-esteem. Such stigmatisation can cause psychological distress and heighten the risk of an intergenerational cycle of incarceration.

D. Structural violence theory

Developed by Johan Galtung and elaborated by Paul Farmer, structural violence theory explains how institutional structures and social arrangements sustain inequality and inflict harm.²³ In the case of children in Indian prisons, structural violence is manifested in the absence of state infrastructure to provide for their education, health, or psychosocial needs. These children are

²⁰ MEDA CHESNEY-LIND & LISA PASKO, *THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME* (2013).

²¹ JOHN BOWLBY, *ATTACHMENT AND LOSS: VOLUME I, ATTACHMENT* (1969).

²² HOWARD BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* (1963).

²³ Johan Galtung, *Violence, Peace, and Peace Research*, 6 J. PEACE RSCH. 167 (1969); Paul Farmer, *An Anthropology of Structural Violence*, 45 CURRENT ANTHROPOLOGY 305 (2004).

subjected to overcrowding, poor hygiene, and a deficit of developmental stimulation, not through overt violence but through systemic neglect and poorly designed policy structures.

IV. METHODOLOGY

This study is qualitative and theoretical in nature. It relies on secondary data, including government reports, academic literature, and prison manuals. There is limited literature and research on the long-term outcomes for children residing in prison with women inmates, and there are no longitudinal studies on their emotional well-being or on the effectiveness of the relevant policies.

V. DATA

The tabulated data published in Prison Statistics India for the period 2019 to 2023 indicate a steady and worrying trend of children residing in Indian prisons with their imprisoned mothers.²⁴ Over this five-year period, the population of women prisoners accompanied by children fluctuated between approximately 1,318 and 1,650, with a corresponding child population of approximately 1,492 to 1,867. Most of these women are undertrial prisoners, a circumstance that directly affects not only the women but also their children, who are compelled to spend their formative years in prison environments. Despite the broadly stable overall trend, the data point to a need to adopt non-custodial strategies for mothers, as recommended by international standards such as the Bangkok Rules and the Convention on the Rights of the Child. The presence of hundreds of children in prisons, which are not intended to be sites of child development, raises serious questions about their rights to education, play, health, and a wholesome environment. These figures indicate a critical need for child-focused prison reform, the development of alternatives to custodial sentencing, and more effective implementation of rehabilitation and childcare facilities for imprisoned mothers.

Year	Women Prisoners with Children	Children Residing in Prisons	Undertrial Women with Children	Children with Undertrial Women	Convicted Women with Children	Children with Convicted Women
2019	1,543	1,779	1,212	1,409	325	363
2020	1,345	1,628	1,184	1,427	214	246
2021	1,650	1,867	1,418	1,601	216	246
2022	1,537	1,764	1,312	1,479	198	230
2023	1,318	1,492	1,049	1,191	249	272

Source: Prison Statistics India (National Crime Records Bureau).

²⁴ NATIONAL CRIME RECORDS BUREAU, PRISON STATISTICS INDIA (2019-2023) (India).

VI. POLICY AND LEGAL IMPLICATIONS

The incarceration of women, and particularly of mothers, is a profoundly complex issue with significant legal and policy dimensions for their dependent children. This silent suffering, arising from institutional indifference and the absence of precise policy, demands careful consideration. In both Indian and global contexts, a range of laws, regulations, and judicial decisions have sought to address the issue, yet gaps in implementation persist, calling for a reconsideration of how justice systems engage with this vulnerable population.

VII. THE INDIAN CONTEXT

A. Constitutional framework

The Constitution of India guarantees the right to life and personal liberty under Article 21, which has been interpreted broadly to encompass the rights to dignity, health, education, and a clean environment.²⁵ Article 39(e) and (f) direct the state to protect children from abuse and to provide conditions of freedom and dignity conducive to their development.²⁶ Despite these safeguards, the children of women prisoners frequently reside in poor conditions. Even where such protections exist, the rights of children residing with imprisoned mothers are usually treated as subordinate to questions of prison administration. Their standing as individual rights-holders is overshadowed by their status as dependents of prisoners. This has prompted the development of various legal and policy instruments for reform.

B. Model Prison Manual, 2003 and 2016

The Model Prison Manual, 2003, prepared by the Bureau of Police Research and Development, was the first to recognise the special needs of women prisoners and their children. It recommended that children below the age of six be permitted to live with their mothers, that arrangements be made for food, education, recreation, and health care, and that separate nursery space be provided in prisons for women.

The Model Prison Manual, 2016, issued by the Ministry of Home Affairs, sets out detailed provisions for women inmates and their accompanying children.²⁷ It provides that children should be permitted to stay with their mothers up to the age of six; that proper nutrition, medical care, clothing, and recreational amenities be provided to these children; that crèches and nurseries be established in prisons; that regular health check-ups be conducted by medical officers, including paediatricians; and that children of school-going age be enrolled in local

²⁵ INDIA CONST. art. 21.

²⁶ INDIA CONST. art. 39, cls. (e), (f).

²⁷ MINISTRY OF HOME AFFAIRS, *supra* note 3.

schools. Notwithstanding these directions, the Manual is not legally enforceable, and its implementation rests with state-level prison departments. Many states lack the infrastructure and human resources required to give effect to these directives.

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

These rights are further secured by the Juvenile Justice (Care and Protection of Children) Act, 2015, under which special protection for children in need, including those confined in prison with their mothers, may be made obligatory.²⁸ The Act is the principal enactment relating to child protection in India. It defines children in need of care and protection to include children found living with persons incapable of providing them proper care. Although the Act empowers Child Welfare Committees to intervene in such cases, it is not framed specifically to address the distinctive challenges faced by children living with their mothers in prison.

While the Act provides for Child Welfare Committees to recommend alternative care arrangements, it remains unclear on the question of long-term rehabilitative care for children removed from prison. Furthermore, most states have not established adequate coordination between Child Welfare Committees and prison administrations, resulting in poor monitoring and regulation of these children's rights.

D. Judicial interventions

The Indian judiciary has played a key role in addressing the rights of women prisoners and their children. In *R.D. Upadhyay v. State of Andhra Pradesh*, the Supreme Court issued detailed guidelines on the treatment of children of prisoners, emphasising the requirement of basic amenities, education, and an appropriate age of separation from mothers.²⁹ Nonetheless, the implementation of these directions has been uneven and largely devoid of enforcement or accountability mechanisms.

The National Expert Committee on Women Prisoners, chaired by Justice V.R. Krishna Iyer, was a pioneering attempt to reform the prison system.³⁰ Although it predated most contemporary reforms, the Committee emphasised that mothers and children should be housed in separate facilities; that children living in jails required education and nutrition; and that mothers with young children should be afforded alternatives to imprisonment, including probation and

²⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, Acts of Parliament, 2016 (India).

²⁹ *R.D. Upadhyay v. State of Andhra Pradesh*, AIR 2006 SC 1946 (India).

³⁰ REPORT OF THE NATIONAL EXPERT COMMITTEE ON WOMEN PRISONERS (Justice V.R. Krishna Iyer, Chairperson 1987) (India).

community sentencing. These recommendations paved the way for later policy initiatives and remain pertinent decades afterward.

In sum, although India possesses several legal frameworks for the protection of children, the absence of a coordinated, child-oriented penal policy prevents them from operating to their full potential. Strengthening implementation, fostering inter-agency cooperation, and institutionalising mechanisms of accountability are essential if the legal rights of children residing with women inmates are to become operational realities rather than abstractions.

VIII. INTERNATIONAL FRAMEWORKS

A. UN Convention on the Rights of the Child, 1989

India is a party to the Convention on the Rights of the Child, which requires that the best interests of the child be a primary consideration in all actions concerning children.³¹ Articles 3, 9, 24, 28, and 37 enshrine the rights to family life, health, education, and protection from arbitrary deprivation of liberty. The Convention calls upon states to avoid arbitrarily separating a child from his or her parent and, where separation is unavoidable, for example in cases of imprisonment, to make due provision for the care of the child.

B. UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 2010

The Bangkok Rules constitute the most detailed international standards specific to the treatment of women prisoners and their children.³² Among their principal provisions, Rule 49 provides that decisions concerning children who reside in prison should be made in the best interests of the child; Rule 51 stresses the provision of proper facilities for childbirth and maternal care within prison; and Rule 52 directs that particular attention be given to the use of non-custodial sentences for pregnant women and mothers with minor children. These standards reflect a gender-sensitive, child-focused orientation, calling upon states to employ alternatives to imprisonment and to safeguard children's rights during their mothers' imprisonment.

C. Other UN guidelines

The United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Nelson Mandela Rules, also contain provisions concerning the welfare of prisoners, including

³¹ Convention on the Rights of the Child art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3.

³² 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).

women and children.³³ Although not designed specifically for children, these standards promote humane treatment, medical care, and recognition of prisoners' family relationships.

IX. DISCUSSION

The incarceration of mothers represents a distinctive convergence of criminal justice, caregiving, and child development. When children are placed in prison with their mothers, their formative years are spent within an institution designed for punishment rather than care. In India, although legal provisions such as the Model Prison Manual, 2016 permit children up to the age of six to remain with their mothers in prison, the prevailing conditions remain inadequate. Most prisons lack child-sensitive facilities such as learning spaces, play areas, or competent caregivers. As a result, children in these settings are deprived of the stimulation essential to cognitive and social development.

Attachment theory, as articulated by Bowlby, holds that early childhood environments significantly affect interpersonal functioning and emotional stability.³⁴ Prisons, by their very nature, expose children to reduced sensory stimulation and heightened stress, leading to developmental delay and behavioural difficulties. Moreover, such children witness punitive practices, surveillance, and occasional violence, rendering incarceration a routine feature of life.

A. Maternal-child relationship in confinement

Notwithstanding these adverse circumstances, the proximity between mother and child during imprisonment has the potential to foster a strong emotional bond, particularly in the earliest years. Such a relationship is, however, complicated by the constraints of the prison environment. Mothers are often unable to fully discharge their parental role because they are subject to restricted routines, limited autonomy, and psychological pressures within a confined space. These restrictions impede their capacity to provide stable and nurturing care for their children.

The bond is further strained by the eventual separation that occurs when children turn six and exceed the prison age limit. In most Indian states, children must leave at the age of six and are either sent to relatives or transferred to state childcare institutions, usually without systematic psychological preparation. This abrupt rupture can disrupt attachment and cause trauma, anxiety, and feelings of abandonment. Bowlby emphasises that disrupted or insecure

³³ 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 (Dec. 17, 2015).

³⁴ Bowlby, *supra* note 21.

attachments in early childhood can have lasting effects, including emotional instability and an inability to form trusting relationships.³⁵

B. Stigma and social exclusion

Social stigma is among the most significant yet neglected consequences experienced by the children of imprisoned mothers. Although they are innocent, these children are frequently judged and excluded by society because of their association with imprisonment. Labelling theory, advanced by Becker, helps explain how society's responses to perceived deviance shape self-definition and subsequent conduct.³⁶ In many situations, children are regarded with suspicion and kept at a distance by both teachers and neighbours.

In India, where gender, class, and caste biases run deep, the stigma of parental incarceration is likely to be more severe. Children may be seen as inheritors of their mother's perceived criminality and discriminated against in education, with limited prospects for social mobility. Such stigmatisation not only marginalises them but also places them at greater risk of intergenerational incarceration, a vicious cycle in which a child, beset by stigma and constrained support, becomes more likely to come into contact with the criminal justice system.

C. Emotional well-being

The cumulative impact of growing up in prison, separation from a caregiver, and rejection by society exacts a high emotional toll on these children. Research indicates that children with incarcerated parents experience heightened anxiety, depression, low self-esteem, and emotional dysregulation. This emotional impact is compounded by the absence of mental health interventions, particularly in Indian prisons, where psychosocial support for mothers and children is sparse or absent.

The emotional burden is often internalised. Children may experience feelings of guilt, confusion, or responsibility regarding their mother's status. This burden, combined with the instability of their living arrangements, impedes their capacity for resilience. The absence of consistent caregivers following separation, together with unstructured institutional environments, raises the likelihood of behavioural difficulties and social withdrawal.

X. BEST PRACTICES FROM INTERNATIONAL CONTEXTS

The plight of children growing up with imprisoned mothers is a broader concern, and several countries have led the way in developing rights-based solutions to minimise the adverse effects

³⁵ Id.

³⁶ Becker, *supra* note 22.

on these children. These international examples present integrated, child-centred models that reconcile correctional objectives with the child's right to development, care, and family life. This section studies best practices in Thailand, South Africa, the United Kingdom, and the United States, which offer key lessons for the reform of the justice system.

A. Thailand: the Kamlangjai Project

Thailand's Kamlangjai Project, also known as the Inspire Project, was launched in 2006 with the support of Princess Bajrakitiyabha and is a model of gender- and child-sensitive criminal justice.³⁷ The initiative assists pregnant prisoners and mothers of infants through access to prenatal and postnatal care, parenting classes, and rehabilitative support. Prisons are adapted to provide nurturing environments, often with the assistance of civil society organisations. Notably, the project also supports reintegration into the community upon release. The model recognises that the mother-child relationship is central to a child's psychological and emotional development and seeks to reduce the disruption caused by incarceration through a rehabilitative rather than punitive approach.

B. South Africa: child-centred correctional policies

South Africa's Correctional Services Act of 1998 permits children to remain with their imprisoned mothers until the age of two, during which period they are housed within correctional facilities.³⁸ These environments are maintained so as to offer early childhood care, routine health monitoring, and preparation for placement outside the facility. When children are subsequently transferred to external caregivers, social workers are actively involved in ensuring that the transition protects the welfare of the child and preserves positive familial relationships. This child-protection orientation reflects a constitutional commitment to children's rights and welfare.³⁹

C. United Kingdom: Mother and Baby Units

The United Kingdom has established Mother and Baby Units in selected women's prisons to accommodate women inmates with babies up to the age of eighteen months, extendable to twenty-four months.⁴⁰ These units are designed to resemble home rather than punitive environments, with access to paediatric health care, trained personnel, and child-friendly facilities. The decision to admit a mother and baby involves careful assessment, including

³⁷ UNITED NATIONS OFFICE ON DRUGS AND CRIME, HANDBOOK FOR PRISON MANAGERS AND POLICYMAKERS ON WOMEN AND IMPRISONMENT (2008) (discussing the Kamlangjai Project).

³⁸ Correctional Services Act 111 of 1998 (S. Afr.).

³⁹ Robertson, *supra* note 8.

⁴⁰ Minson, *supra* note 16.

whether the mother can provide a safe and supportive home. In addition, the United Kingdom has adopted child impact assessments at the time of sentencing, whereby courts consider the effect of imprisonment on a dependent child and, in appropriate cases, impose non-custodial sentences.⁴¹

D. United States: community-based alternatives and nursery programmes

In the United States, several state prison systems have established prison nursery programmes, including the programme at the Bedford Hills Correctional Facility in New York.⁴² These nurseries permit mothers to reside with their newborns for as long as eighteen months in specialised housing units, and include parenting education, mental health services, and vocational training to support long-term reintegration. Increasingly, some jurisdictions have experimented with community-based alternatives to imprisonment for mothers, particularly in cases involving minor offences. Schemes such as Washington State's Community Parenting Alternative enable mothers to serve their sentences at home under electronic supervision while retaining custody of their children.⁴³ Such alternatives proceed from the understanding that institutional environments are unlikely to support normal childhood development.

XI. RECOMMENDATIONS FOR REFORM

A. Community-based alternatives to incarceration

Avoiding incarceration in the first instance, in cases involving non-violent and low-risk offenders, particularly where the woman is a primary caregiver, is among the most effective means of safeguarding the rights of these children. Courts should be enabled and encouraged to employ non-custodial measures such as probation, electronic monitoring, open prisons, and supervised home detention. Such alternatives are envisaged under Rule 64 of the Bangkok Rules, which calls for community-based sentencing of pregnant women and women with dependent children.⁴⁴ Countries such as the United Kingdom and the United States have piloted community sentencing schemes and electronic tagging, enabling women to complete sentences while continuing to care for their children. India should reform its criminal procedure framework and promote pre-sentencing child impact assessments so that courts may take into

⁴¹ PRISON REFORM TRUST, WHAT ABOUT ME? THE IMPACT ON CHILDREN WHEN MOTHERS ARE INVOLVED IN THE CRIMINAL JUSTICE SYSTEM (2018).

⁴² Joseph R. Carlson, Prison Nurseries: A Pathway to Crime Prevention?, 26 CORRECTIONS COMPENDIUM 1 (2001).

⁴³ Mary Woods Byrne & Patricia J. Kelly, Mothers in Recovery: Family-Centered Approaches to Treatment for Women with Substance Use Disorders, 22 J. FAM. SOC. WORK 1 (2019).

⁴⁴ 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, r. 64 (Dec. 21, 2010).

account the effects of maternal imprisonment on dependent children before committing mothers to custody.

B. Child-sensitive prison infrastructure

Where incarceration is unavoidable, it is essential that prison settings be redesigned to meet the developmental needs of children. Indian prisons exist largely as places of punishment for adult men and continue to lack the capacity to function as settings in which children can develop, learn, and thrive. Reform should incorporate the establishment of separate mother-and-child units providing privacy, cleanliness, age-appropriate nutrition, and child-friendly facilities; the training and deployment of professionals specialising in child development, such as psychologists, paediatricians, and early childhood education practitioners; and regular monitoring by Child Welfare Committees, together with the inclusion of prison-based early education schemes in cooperation with the Ministry of Women and Child Development. These measures are aligned with the Model Prison Manual, 2016, which already identifies many of these provisions; compliance should, however, be made mandatory through legislative measures and supported by funding and training for prison authorities.

C. Post-release support programmes for mothers and children

Re-entry into society following imprisonment remains one of the most neglected stages of the criminal justice process. Children who have grown up in prison often experience psychological trauma, developmental delays, and social stigma, while mothers, upon release, frequently return to poverty, fractured family relationships, and institutional isolation. To break the cycle of intergenerational incarceration, it is essential to invest in robust post-release services, including mother-child transitional housing to facilitate stable and secure reunification; trauma-informed care and psychosocial counselling for children to address the effects of confinement and separation; vocational skills training and employment support for re-entering women to promote economic independence; and parent education and community reintegration programmes to assist mothers in rebuilding family and community relationships. Reforms in countries such as Germany and Sweden have shown that post-release care reduces recidivism and strengthens the maternal-child relationship.⁴⁵ Indian prison reform should incorporate such services in conjunction with state child protection agencies and non-governmental organisations.

⁴⁵ Robertson, *supra* note 8.

D. Further recommendations

Several further measures merit consideration. The Model Prison Manual, 2016 should be applied uniformly across all states, since at present only a few states have implemented its guidelines, and then only partially. In keeping with the Bangkok Rules, non-custodial sentences for mothers with dependent children should be prioritised. Prison staff require training in children's rights and women-related matters in order to deliver humane and sensitive treatment. Finally, independent monitoring mechanisms should be established to ensure proper oversight of the welfare of children in prison. A transition towards child-sensitive justice at sentencing, within prisons, and during reintegration into society would not only safeguard these children but also advance the rehabilitation of women inmates. Such reforms must be coordinated among the judiciary, prison administrations, social welfare organisations, and civil society so as to secure for these children an unstigmatised acceptance into society.

XII. CONCLUSION

The children of imprisoned mothers traverse an emotionally and developmentally difficult path. The prison environment is not configured to support the well-being of such children, exposing them to conditions that may impair their mental and physical growth over the long term. Although the mother-child bond holds the potential to provide much-needed emotional support, institutionalisation and the eventual separation destabilise that source of stability. These children are further affected by social stigmatisation and by limited opportunities for normal early childhood experiences. A criminological analysis, drawing on attachment, labelling, and structural theories, is significant in directing attention to this population, which suffers the secondary consequences of confinement, and in highlighting the violation of these children's direct rights and well-being.

The analysis demonstrates that maternal imprisonment has wide-ranging consequences for a child's emotional, social, and overall development. Such children are collateral casualties of a system that is insufficiently gender-sensitive and child-sensitive. Policy reform is urgently required, not merely to acknowledge their presence but to effect child-rights-based and gender-sensitive changes that emphasise non-custodial measures, rehabilitation, and a unified system of childhood protection.

International best practices, as well as the available research, indicate that it is not only possible but essential to implement policies that humanise the incarceration of mothers and safeguard the best interests of their children. Empirical data reveal the difficulties these children face in relation to their education, their freedom of movement, and the gaps in implementation. In light

of these concerns, community-based alternatives should be regarded as an initial component of the penal system, with reforms to prison infrastructure following where necessary. These interventions must be pursued through coherent policy and inter-sectoral coordination across government, with due regard for the rights and dignity of the children of imprisoned mothers, in order to realise a child-sensitive justice system.

XIII. BIBLIOGRAPHY

1. JOYCE A. ARDITTI, PARENTAL INCARCERATION AND THE FAMILY: PSYCHOLOGICAL AND SOCIAL EFFECTS OF IMPRISONMENT ON CHILDREN, PARENTS, AND CAREGIVERS (NYU Press 2012).
2. Shaista Bano, Lives Behind Bars: Children Living with Incarcerated Mothers in Indian Prisons, 12 J. SOC. JUST. STUD. 45 (2018).
3. HOWARD BECKER, OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE (Free Press 1963).
4. JOHN BOWLBY, ATTACHMENT AND LOSS: VOLUME I, ATTACHMENT (Basic Books 1969).
5. Chandra Bozelko, When Babies Do Time with Mom: Prison Nursery Programs Can Work, Wash. Post (2015).
6. Mary Woods Byrne & Patricia J. Kelly, Mothers in Recovery: Family-Centered Approaches to Treatment for Women with Substance Use Disorders, 22 J. FAM. SOC. WORK 1 (2019).
7. PAT CARLEN, WOMEN AND PUNISHMENT: THE STRUGGLE FOR JUSTICE (Willan 2002).
8. Joseph R. Carlson, Prison Nurseries: A Pathway to Crime Prevention?, 26 CORRECTIONS COMPENDIUM 1 (2001).
9. Meda Chesney-Lind, Patriarchy, Crime, and Justice: Feminist Criminology in an Era of Backlash, 1 FEMINIST CRIMINOLOGY 6 (2006).
10. MEDA CHESNEY-LIND & LISA PASKO, THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME (SAGE Publications 2013).
11. Paul Farmer, An Anthropology of Structural Violence, 45 CURRENT ANTHROPOLOGY 305 (2004).
12. Johan Galtung, Violence, Peace, and Peace Research, 6 J. PEACE RSCH. 167 (1969).
13. Sahana Ghosh, Women and Children in Prisons in India: A Human Rights Perspective, 48 INDIAN J. CRIMINOLOGY 35 (2020).

14. LAUREN E. GLAZE & LAURA M. MARUSCHAK, PARENTS IN PRISON AND THEIR MINOR CHILDREN (Bureau of Justice Statistics Special Report 2008).
15. ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY (Prentice Hall 1963).
16. HUMAN RIGHTS WATCH, INDIA: PRISONS NOT FIT FOR CHILDREN (2018).
17. MINISTRY OF HOME AFFAIRS, MODEL PRISON MANUAL FOR THE SUPERINTENDENCE AND MANAGEMENT OF PRISONS IN INDIA (2016).
18. SHONA MINSON, THE IMPACT OF MATERNAL IMPRISONMENT ON CHILDREN: A SUMMARY OF RESEARCH EVIDENCE (University of Oxford 2017).
19. PREETI NAIR, CHILDREN OF WOMEN PRISONERS IN INDIA: INSTITUTIONAL NEGLECT AND SYSTEMIC BARRIERS (Child Rights and You Working Paper Series 2008).
20. NATIONAL CRIME RECORDS BUREAU, PRISON STATISTICS INDIA (2022).
21. NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, REPORT ON CHILDREN LIVING IN PRISONS WITH MOTHERS (2020).
22. PRISON REFORM TRUST, WHAT ABOUT ME? THE IMPACT ON CHILDREN WHEN MOTHERS ARE INVOLVED IN THE CRIMINAL JUSTICE SYSTEM (2018).
23. OLIVER ROBERTSON, THE IMPACT OF PARENTAL IMPRISONMENT ON CHILDREN (Quaker United Nations Office 2007).
24. Sucharita Sarkar, Invisible Children: A Policy Analysis on the Children of Incarcerated Women in India, 56 SOC. WORK REV. 75 (2019).
25. RANI DHAVAN SHANKARDASS, OF WOMEN INSIDE: PRISON VOICES FROM INDIA (Routledge 2011).
26. UNITED NATIONS OFFICE ON DRUGS AND CRIME, TOOLKIT ON GENDER-RESPONSIVE NON-CUSTODIAL MEASURES (2013).
27. Data.gov.in, Prison Statistics India (PSI) 2019-2023, <https://www.data.gov.in>.
