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# The Grim Reality of Child Support and Child Incarceration in India

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ABHISHEK BHARDWAJ<sup>1</sup>

## ABSTRACT

*The psychosocial health of children whose parents are incarcerated is a serious concern in India, but it is largely ignored. Despite Supreme Court standards requiring age-appropriate care for children living in jail with their mothers, there is variation in practise, adding to the disadvantages of being a prisoner's child. Children who are left at home due to parental incarceration suffer risks that derive from their pre-existing socioeconomic disadvantages, the child's continuous interaction with the criminal justice system, and society perceptions of them.*

*Child support refers to a parent's obligation to contribute to his or her child's financial well-being. The child support idea is launched when the kid's parents decide to split or divorce. When both parties begin living separately, the child who was born from the marriage or relationship does not suffer as much, and so the parents feel compelled to provide child support.*

**Keywords:** Children, Support, Incarceration, Mothers.

## I. INTRODUCTION

Around the globe, children of incarcerated parents are acknowledged as 'orphans of justice' but this acknowledgment does not always translate into the desired ministrations that needs to be given to this bracket. This populace, on their own, feel under-empowered to espouse for their entitlements. Added succour to the needs and concerns of these children, and indagation in their social, emotional and health necessities would definitely be helpful in improving their izzat.

Children of incarcerated parents could be broadly classified into two broad categories – those who live along with their mother in the prison i.e., up to the age of 6 years and those that are abandoned when their parent or parents get incarcerated. The information about the latter group is shambolic as they go on to live with their remaining parent, in institutions for childcare, with their extended kin, and in many cases on their own as only child household. Notwithstanding, contemplating the fertility rate and the prison populace within the reproductive age group, an

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<sup>1</sup> Author is a student at Amity Law School, India.

eminently rough assessment of children of incarcerated parents could be more than 9 lakhs in the country. Women form only 4% of the prison population in India. According to National Crime Records Bureau (NCRB) data, 1,543 women inmates i.e., 8% of the 19,913 women prisoners across the country, whose children (1,779 in all) lived with them in jail in 2019.

In our country, over a decade to 2019, an average 1,586 or 9% of all women prisoners had children with them, and 75 % of population of these mothers were undertrials, according to of NCRB data.<sup>2</sup> There are 31 jails for women in 15 Indian states and union territories, while 21 States and Union Territories have no segregated jails for women. Of all women undertrials in 2019, about one in 10 were with children. Seven in 10 of the 478,600 people in prison in Indian jails are under trial, as of September 2020.<sup>3</sup>

## II. CHILDREN LIVING IN THE PRISON

It is commonly known that the first five years of a child's life are crucial for their physical, emotional, social, and cognitive development. Beginning prenatally and continuing through infancy, childhood, and even later, the social and physical environment, in combination with biology, has an impact on development. The physical and social environment in prisons is not favourable to a child's development. Interventions are essential in this setting if children (under the age of six) are to remain in the prison with their mother.<sup>4</sup>

*RD Upadhyay vs. State of Andhra Pradesh<sup>5</sup> and Others* was decided by the Honourable Supreme Court citing the suggestions of the All India Committee on Jail Reforms, guidelines for care provision for this group of children have been established. They have highlighted that while in custody with his or her mother, the child should not be treated as an undertrial or a felon, and that he or she is entitled to age-appropriate food, shelter, medical care, and educational and recreational opportunities. The physical development of children must be checked on a regular basis, and immunisation provisions must be made available within the prison. Every prison must have a creche (for children aged 0-3 years) and a nursery (for children aged 3-6 years), both of which should ideally be located outside the jail grounds.

Before incarcerating a pregnant woman, the competent authority must ensure that the jail has adequate pre-natal and post-natal care facilities. Within the prison, lactating and pregnant

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<sup>2</sup> Shreehari Pillath, Indian prisons in dire straits, Business Standard, IndiaSpend (September 7, 2020 14:31 IST), [https://www.business-standard.com/article/current-affairs/indian-prisons-in-a-dire-state-7-in-10-undertrials-1-in-3-dalit-or-tribal-120090700193\\_1.html](https://www.business-standard.com/article/current-affairs/indian-prisons-in-a-dire-state-7-in-10-undertrials-1-in-3-dalit-or-tribal-120090700193_1.html)

<sup>3</sup> Ibid.

<sup>4</sup> UNICEF. Early Childhood Development: Real Life Stories from Around the World [Internet]. New York: UNICEF; 2011. Available from: [https://www.unicef.org/earlychildhood/files/ECD\\_\\_Real\\_Life\\_Stories\\_from\\_Around\\_the\\_World.pdf](https://www.unicef.org/earlychildhood/files/ECD__Real_Life_Stories_from_Around_the_World.pdf)

<sup>5</sup> RD Upadhyay vs. State of Andhra Pradesh (1998) AIR 1999 SC 2183

women are entitled to a special diet. Aside from high-risk inmates, the jail officials must arrange for temporary release for deliveries in a government hospital. In the event of non-violent offenders, sentence suspension may be an option. To safeguard the child's long-term interests, the birth certificate should not list the jail as the location of birth, but rather the town where the jail is located. In the absence of government data on compliance with these recommendations, several state-specific researches are being relied upon to better understand the status of children living in jail with their mothers.

According to research, not all prisons provide separate room for female detainees and their children. Overcrowding may still be a problem in circumstances where separate barracks have been designated. Because most jails are shut up after sunset, children's development is hampered by a lack of room.<sup>6</sup>

Apart from providing a space for education, amusement, and supplemental nutrition, the creche and nursery can provide an opportunity for children to escape from the prison environment for a few hours. Despite the Supreme Court's directives, a creche and nursery have only been found to be present in a few jails. Furthermore, whenever accessible, the quality of the nursery/creches has been shown to be inconsistent in terms of teacher availability, play material, the inclusion of a child-centred library, and the teacher-student ratio. Children's recreational activities range from being given a few toys to having a few swings in the ground that are sometimes used to dry clothes. The swings are only available in the afternoons, which is a disadvantage for youngsters, particularly during the summer. Most prisons had television sets, but they were primarily utilised to watch serials that appealed to the interests of female inmates rather than children. Children were reportedly brought on picnics in a few prisons with the help of non-governmental organisations on occasion. The amount of food provided to the children was also found to be insufficient, and the mothers claimed that no special diet was offered to the children who were weak or ill. In addition, there were differences in the supply of an age-appropriate food for children. In some situations, special measures were taken to ensure that children's diets met their nutritional needs, but in others, female inmates were forced to share their food with their children. In all of the studies, a specific dietary plan for pregnant convicts was found to be missing. Despite the inclusion of judicial rules in the Model Prison Manual, 2016, there are still differences amongst institutions.

Children's health concerns are not always effectively addressed in the absence of a paediatrician on the premises. It was discovered that jail hospitals lacked the necessary equipment to treat

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<sup>6</sup> Bhandari A. Women prisoners and their dependent children: A study of Jaipur and Jodhpur central jails in Rajasthan *Sociol Bull.* 2016;65:357-79. Available from: <https://www.jstor.org/stable/26369541>.

little infants. In a more recent study conducted in two Uttar Pradesh prisons, mothers indicated that when their children had major health concerns, doctors from the district hospital were notified and asked to attend to them, but the mothers were dissatisfied with the medical care provided to their children. When it came to the immunisation schedule, it was mostly followed as long as the children were present at the time of the inoculation and the vaccine was accessible.

While the majority of studies have focused on the living, educational, health, and recreational facilities accessible to children, relatively few have attempted to study the physical, cognitive, social, and language development of children living with their mothers in prison. As a result, reliance is placed on two studies that are quite recent in character and that are easily accessible. The cognitive development of children was assessed through an observation checklist (a brief recognition and naming test designed for the children by the researcher), as well as interactions with crèche staff, in one of the studies conducted in a Delhi prison, and language development was determined through interviews with the incarcerated mothers. Children who were born in prison or who began living in prison at a young age have trouble recognising alphabets and numbers, pronouncing words, and understanding age-appropriate instructions due to a lack of a stimulating environment.

A school readiness test was used in another study in Delhi prisons to measure the qualities that assist youngsters (aged 3-6 years) transition better in school and gain literacy and numeracy skills. The researchers discovered that while most of the children were able to master lower order thinking skills such as pre-number concept and simple pattern thinking, higher order thinking skills such as sequential thinking, object classification, reading readiness, and relative comparison of numbers were difficult for them to master. The children's conceptual grasp of the outside world was influenced by their limited or non-existent exposure to it. Men, even adult relatives, were often feared by children.

Furthermore, it was observed that spending a long period of time inside the prison changed the concept of "going outside" for youngsters, limiting them in many cases to a court visit in a van. In another survey, mothers said that their children's social development was being harmed by the lack of family life. The youngster misses out on playing with his or her siblings, and the youngster in prison is denied the opportunity to grasp and assimilate familial values and traditions. The children's exposure to profanities and violent fighting in the barracks is also a serious problem. In addition to being involved in physical conflicts and bullying, such youngsters were shown to be more vocally aggressive.

**(A) Supreme Court Guidelines for Children of Prisoners mentioned in the Modern Prisoner's Manual, 2016 are as follows**

- It should be sine qua non for jails to have appropriate facilities for prenatal and postnatal care for both, the female prisoners and their children.
- Regular gynaecological examination of female prisoners shall be carried out in the District Government Hospital. Bona fide prenatal and post-natal care shall be provided to the prisoner as per medical practitioner's advice.
- Where probable and feasible, provisional release or parole arrangements or suspension of sentence in case of casual offender/minor offender should be made to allow an expectant prisoner to have her delivery outside the prison. This arrangement can be deprived of a prisoner only in exceptionally high-risk cases.
- It should not be mentioned in the birth certificate of the child that he is born in prison; just the address of locality will be recorded.
- Inside the prisons, children should be able to acquire shelter, food etc., medical assistance when essential, education and a creche or recreational space.
- Children on a regular basis should be examined by a lady Medical Officer/Practitioner to keep a tab on their physical growth and secure timely vaccination, while logging vaccination records. Supplementary clothing, diet, etc. must be provided via Medical Officer's recommendation.
- Children can live with women prisoners up to the age of six. After that they should be ceded over to welfare institutions run by the Social Welfare Department, ideally in the same town or city.
- The child can live in such an institution pending his/her mother's release or if the child is competent enough to earn a livelihood.
- The Director of Social Welfare Department, shall ensure that the concerned children kept under protective custody in care homes shall be sanctioned to meet their mother at least once a week.
- The State Legal Services Authorities shall take imperative measures to intermittently inspect jails to oversee acquiescence with the directions regarding children and mothers.

### **III. CHILD MAINTENANCE LAW IN INDIA**

Section 125 of the CrPC recognises child maintenance in India. It has been stipulated that the child can sue the father for maintenance in India. Hindu law also allows for child support under

Section 26 of the Hindu Marriage Act.

The provision of the Act says that a minor child is entitled to support from the father if custody of the child is awarded to the mother through the divorce case or otherwise.

Recently, Indian courts ruled that a significant kid, whether a daughter or a son, is entitled to maintenance from his or her father under Indian family law if they are financially reliant on their parents.

Dependence on parents indicates that they are unable to support themselves, either because they are studying or because of a medical condition.

The entitlement to maintenance under Indian family law extends not only to the wife and dependent children, but also to poor parents and divorced wives, according to Section 125 of the Code of Criminal Procedure, 1973. The husband's ability to offer sufficient resources is a determining factor in the maintenance claim.

After a divorce or a separation in wedlock, the most difficult topic is child support or child custody. In India, whether custody is agreed upon by the parties or by the parents themselves is up to them, but if there is a disagreement, the subject will be settled by the family court.

Custody of the kid is not an automatic result of divorce; instead, one must apply to the court for custody of the child, which varies by religion. When it comes to dealing with the problem, the court has sole authority to decide whether to grant sole or shared custody. When it comes to small children, the court presumes to give custody to the mother because small children need to be cared for and handled with tenderness by the mother herself, but when the child is older than 9 years, the kid's preferences are also taken into account.

#### **(A) Important case laws on parental obligation for child support**

##### ***1. Bakulabai v. Gangaram (1988) 1 SCC 537<sup>7</sup>***

The petitioner Bakulbai, who claimed to be Gangaram's wife, stated that they were both married and had a son named Maroti, but Gangaram denied the allegations made by the appellants. However, the court held that while bigamous marriage is illegal under section 11 of the Hindu Marriage Act, 1955, however, if both parties live together as husband and wife for several years and have a child, the child acquires a legal status under section 16 of the same act, and the bigamous kid is entitled to maintenance under section 125 of the Cr.PC.

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<sup>7</sup> Bakulabai v. Gangaram (1988) 1 SCC 537

## **2. Jagdish Jugtawat v. Manju Lata (2002) 5 SCC 422<sup>8</sup>**

In this example, the parents married and had two children, but their circumstances deteriorated with time, and they divorced. One of the two children was a major girl who filed a petition for support from her parents. Although section 125 of the Cr.P.C. does not impose any liability on parents for children over the age of 18, the court held that by combining section 125 of the Cr.P.C. with section 20 (3) of the Hindu adoption and maintenance act, 1956, a girl who is major and unmarried is entitled to maintenance from her parents.

## **3. Padmja Sharma v. Ratan Lal Sharma (2004) SCC 266<sup>9</sup>**

In this case, it was decided that a Hindu working woman is also responsible for her children's upkeep. Under the Hindu Adoption and Maintenance Act, 1956, a Hindu divorced father and a Hindu divorcee earning mother are both required to contribute to the upkeep of their children. Regardless of whether or not their mother is capable of earning, the father is not solely responsible for the children's upkeep.

## **4. Noor Sabha Khatoon v. Mohd. Quasim (1997) 6 SCC 233<sup>10</sup>**

The court ruled in this case that Muslim children are entitled to support under the CrPC. The benefit under Section 125 CrPC is available to all children, regardless of faith, according to the court. The mother has the right to seek maintenance for her children for two years from the date of birth under the Muslim Women (Protection of Rights on Divorce) Act, 1986. This is separate and apart from the entitlement to maintenance under the CrPC for minor children who are unable to support themselves.

## **IV. CONCLUSION**

Children of incarcerated parents are known as "orphans of justice" around the world, but as this review demonstrates, this recognition does not always transfer into the needed attention for this population. On their own, this people feels powerless to campaign for their rights. Simultaneously, adherence to the colonial legacy of law without significant revisions has resulted in penal populism, without necessarily evaluating alternate kinds of sentencing that could serve the dual objective of "repairing the harm" and minimising the effect of parental misbehaviour on children. More attention to these children's problems, as well as research into their social, emotional, and health requirements, will undoubtedly help them improve their situation.

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<sup>8</sup> Jagdish Jugtawat v. Manju Lata (2002) 5 SCC 422

<sup>9</sup> Padmja Sharma v. Ratan Lal Sharma (2004) SCC 266

<sup>10</sup> Noor Sabha Khatoon v. Mohd. Quasim (1997) 6 SCC 233

In terms of child maintenance legislation, as both parents have equal rights to the child because they both contribute to the child's upkeep, no one should suffer as a result of a separation or divorce. In the child support system, both parents must petition for joint custody because they must both contribute financially and economically to the child, but in the event of a small child, the mother has the first claim to the child because she is the one who gave birth to it.

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