

RIGHTS OF CHILDREN OF INCARCERATED PARENTS: A CONSTITUTIONAL PERSPECTIVE

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ABSTRACT

Children of incarcerated parents are frequently considered as "forgotten children" and "victims of justice" (Joan P., 20015). In India, children under the age of six are frequently placed into prison custody with their mothers (Robertson O., 2008). According to Greenfield and Snell, roughly 7 out of 10 women in India who are incarcerated have a kid under the age of 18. These vulnerable children endure numerous challenges, and their specific requirements necessitate special attention. As a result, the authors of this study attempted to investigate the phenomenon of parental incarceration and its impact on children of incarcerated parents in light of legal provisions designed to protect such children, as well as devise legal solutions to meet the needs of these children and their families. The writers conducted their research using a doctrinal approach and material from secondary sources. The article delves into a comparative analysis of the legal provisions made for children of detained parents in many nations throughout the world, including Australia, Canada, China, to identify the legal and social problems involved. The study then focuses on the legislative safeguards in place in India to protect such children. A constitutional perspective is also taken on the matter, and the need for a separate law in India to safeguard children whose parents are incarcerated is recommended. It is also proposed that certain elements of the Juvenile Justice Act of 2015 be extended to such children. The ultimate goal is to refocus the legal justice system's approach to incarcerated people's families.

INTRODUCTION

Children of incarcerated parents are frequently dismissed as "forgotten children" and "victims of justice."When a loved one is condemned to prison, it is tough for everyone to cope with the emotional anguish. Unintentional victims of crime, such as children of incarcerated parents, may bear the brunt of the burden.A prison will never be able to provide the nurturing atmosphere that every child deserves. As a result, children whose parents have been incarcerated face special challenges.

In India, children under the age of six are frequently brought into prison custody to be with their mothers. According to Greenfield and Snell, almost seven out of ten women in India who are incarcerated have a kid under the age of eighteen. When a woman is incarcerated, in the absence of better alternatives for child care, she prefers that her children remain in custody with her. According to the National Crime Records Bureau's Prison Statistics India Snapshots - 2012, the country's 385,135 inmates were kept in 1,394 existing prisons. In total, 344 women were convicted, together with their 382 children, and 1,226 women

were awaiting trial, along with their 1,397 children, in various jails across the country. These youngsters confront challenges, and their increasing numbers and distinctive requirements necessitate attention.

Innocent children are living in poor conditions in prison, which may contribute to the development of low self-esteem and negative conduct in the future. Children are not only deprived of recreational opportunities and father/family member affection, but they are also exposed to criminogenic influences from other inmates (as evidenced by their abusive language and frequent fights), making them vulnerable to the development of problem behaviour in the future.

There is no systematic mechanism of documenting the number of children whose parents are incarcerated, let alone verifying the correctness of these data. It is not mandatory for inmates to disclose this information, and no attempt at direct measurement has been made as of yet. Furthermore, incarcerating parents is more likely to exacerbate rather than alleviate pre-existing family difficulties.

The child welfare system, as the country's most fundamental assistance for vulnerable children, must begin to address the needs of children with incarcerated parents in a serious, methodical manner, while also acknowledging their legal rights. This is especially important in India, where the rights of children have long been prioritized.

Over the last decade, international efforts have intensified to develop legislation that especially address the predicament of young children whose parents are incarcerated. In its Preamble, the United Nations Convention on the Rights of the Child (CRC) mentions the Declaration of the Rights of the Child, which states, *"the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."* The Preamble also highlights *"that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration."* The researchers chose this topic to identify the special obstacles involved, analyse the legal rights available to children, and propose solutions to the existing issues in this regard.

REVIEW OF LITERATURE

LEGAL & SOCIAL CHALLENGES INVOLVED

In order to methodically develop solutions in light of legal arrangements in India and other countries, it is first necessary to separate the issues that arise as a result of parental detention and their negative impact on children. The analysts have conducted a thorough examination into the following:

It is believed that minor children whose parents are under some form of criminal justice control are among the most vulnerable populations of children. Despite the fact that rising detention rates indicate an increasing number of children who have lost one or both parents to imprisonment, hardly no attention is paid to this hapless population (Council on Crime and Justice, 2006). Despite the knowledge that children of incarcerated parents are at a higher risk for engaging in antisocial behaviour, their lack of visibility in the criminal justice and child welfare systems can obstruct good intervention and lead to disdain. Most

detention centres do not ask for or collect information about detainees' families. There aren't many that compel law enforcement officers to inquire about a detainee's children when they are apprehended (Denise Johnston). Because there is a lack of study and authority data, administration programs are unable to prepare or provide essential administrations to these youngsters and their guardians (Simmons C.W,2000).

INDIFFERENCE BY THE COURTS

The courts rarely inquire about a detainee's children at the time of sentencing, allowing another opportunity to recognize the children and mediate if necessary. When it comes to sentencing, judges frequently overlook a guilty party's responsibility to keep the peace. Structures and administrations in jails are often designed without consideration for the impact they have on young inmates, resulting in distant and closed-off offices that are unappealing to youngsters. Returning a parent to a family after detention is difficult for everyone involved, but families and detainees are rarely given the support they need during this actual adjustment, which could be just as troublesome as the detention itself (Clarke, n.d.).

LACK OF EDUCATION AND HEALTHCARE FACILITIES

Children in many prisons lack enough nutrition and warmth, both of which are crucial for their physical and mental development. Such children do not seek out rehabilitative care and training in jails, and if they do, they are not given what they need. Each parent in prison has a string of children that rely on them alone for all of their basic requirements, such as food, clothing, accommodation, instruction, preparation, and security. Children of all ages are exhibited simultaneously, and as a result, a child never progresses in learning the ABCs. There is no one-size-fits-all approach to imparting suitable formal education. Most health offices are also inaccessible, and the children who require mental and mental treatment as a result of traumatic life experiences are the ones who suffer the most (Beatty, 1997).

LACK OF FINANCIAL RESOURCES

Simmons (2000) stated that the distance between a child's house and the jail once the child has reached the age of six in India and is in child care is a major determinant of whether the child would visit the parent. Many children lack the financial means to see a parent who is incarcerated. If a child approaches the assets to allow visits, families may refrain from visiting the incarcerated parent in jail owing to the "septic, unpleasant going to rooms" or a belief that "prison isn't the best environment for a child" (Beatty, 1997; Seymour & Hairston, 1998). Edin, Nelson, and Paranal (2004) observed that for wrongdoers who had predictable contact with their child or the tyke's mother prior to detention, the jailed parent's relationship with the tyke and the tyke's mother suffered an unmistakable detrimental influence. Detention was occasionally a pivotal moment in the relationship for guilty parties whose way of life decisions had caused a rift between themselves and their tyke or tyke's mother, according to the designers, and it served as a chance to refocus the detained parent's life. These factors can stymie a child's progress (Parental

incarceration and the Family: Psychological and Social Effects of Incarceration on Children, Parents, and Caregivers, 2013). Typically, children have lived in poverty prior to, during, and after their parents' imprisonment and do not have the financial means to visit them (Balusek, 2013).

Research Problem

The samples for the present study were selected from the prisons of Shimla and surrounding areas. The imprisoned parents whose children were under eighteen years of age were selected for the study.

Objective

To observe the opinions, attitudes and state of mind of imprisoned parent

Research Method

Morgan and Smircich (1980) claim that the actual suitability of a research method stems from the essence of the social phenomenon to be studied. Brink (1999) points out that the research questions, the aim, and the objectives of the study should influence the selection of the research design. In this study non-probability sampling technique was used. In this study we used descriptive research design to explore the opinions, attitudes and state of mind of imprisoned parent. The samples for the present study were selected from the prisons of Shimla and surrounding areas. The imprisoned parents whose children were under eighteen years of age were selected for the study. Interview schedules were prepared according to the objectives of the study. Information was gathered by administering pre-designed schedules on the targeted respondents. For data collection the researcher visited the prisons and spent time discussing with imprisoned parents, observing their lifestyle, and their views regarding the judicial system and the problems, which their families face when they were imprisoned. At the same time, the children and their caregivers were also conversed.

Data Analysis & Interpretation

In all, there were 46 male and two female prisoners. As far as the age-wise distribution is concerned, maximum (50 percent) accused parents were between 31-40 years of age, followed by 33.3 percent in the age group 41-50. The family structure of accused parents was evaluated and it was found that 52.02 percent of the respondents had family consisting of 5-7 family members followed by 27.08 percent families having 3-4 family members. The educational qualifications of accused fathers was noted down during the survey and it was found that maximum (36.96 percent) were matriculate, followed by 17.40 percent educated up to +2 and 15.22 percent illiterates. Information regarding the occupation of accused (in case of fathers), was gathered and it was found that 41.67 percent were involved in agriculture, followed by 35.42 percent involved in private job.

Opinions and attitudes of imprisoned parents were gathered to know their state of mind and the impact of imprisonment on child's socio-psychological state. Awareness of child regarding the parental imprisonment is very important aspect, which governs their physical and mental wellbeing. As per table -1

statistics, 79.17 percent accused parents revealed that their children were aware of their incarceration, while 20.83 percent had not disclosed it to their children, because of the fact that they were too young to be exposed the factual position or being guilty, the parents were hesitant to reveal the same to their children.

Opinion	Yes		No	
	N	%	N	%
Child's awareness of the fact that parent is imprisoned	18	79.17	10	20.83

Table - 1

The incidence of imprisonment is very important factor, which not indicates the criminal behaviour of parent, but also make the children exposed to traumatic situation.

Opinion	Parents hesitant to explain the situation		Child is too young to understand the situation	
	N	%	N	%
Reason for non-awareness	3	30	7	70

Table - 2

If the children are repeatedly exposed to the distressing environment, their mental and emotional state gets disturbed and they cannot adjust and cope-up with the circumstances. In all, out of 48 imprisoned parents, 45 were imprisoned for the first time and rest three were imprisoned for more than one time.

Opinion	Yes		No	
	N	%	N	%
Earlier incidence of imprisonment	3	6.25	45	93.75
If yes, number of times	Once		Twice	
	2	66.67	1	33.33

Table -3

The probable harm to a child when his/ her parent is detained has been well documented. Children who eyewitness their parents' arrests may suffer long-term emotional harm. Child's perceptions of arrest varies with the age and include, the anxiety that the parent will be hurt; fear of parting and loss of parental protection; worry over the issues of right and wrong; may view police as a character who can help, hurt, or take them away. Similarly, they react in a different manner depending on their age. They want to cling to parent to avoid separation. The forceful separation, at times, result in trauma among children and this being a sensitive issue, must be handled properly. As revealed by the respondents, 35.42 percent children were present at the time of arrest of their parent, while 64.58 percent were not present during the arrest.

There are number of situations in which young children are left without adult care as an outcome of parental arrests. In an attempt to safeguard child upon the arrest, there is need of a protocol, which offers a

series of steps and suggestions for law executers to ensure the safety of children whose parents are in prison. The goal is to curtail the disturbance to the children by providing the supportive atmosphere to minimize the unnecessary trauma and regulate care for the children. Through no mistake of their own, many children have been exposed to and affected by viewing their parent being arrested, by seeing their parent in court, or by visiting their parent in the prison. Indeed, many people who are detained, put

on trial, and imprisoned each year leave behind minor children who must be handled in their parent's absence. Although such exposure does not always have an undesirable effect on children, the present research suggest that the parental involvement in the illegal system can put children at risk of housing insecurity, financial pressure, mental health problems, poor academic performance, and rebellious and antisocial conduct. Parental imprisonment can be shocking for the children and can hamper the relationship they have with their parent. Children can confuse an already problematic situation for the police and others present during an arrest. Parental arrest policies must prioritize the physical and emotional security of children by helping government think how to manage the unanticipated situations they face when a parent or caregiver is captured. Those policies help reduce the harmful effects on children who view their parent's arrest by officers, for instance, making the arrest in the absence of child and permitting the parent to assure and calm down the child during the arrest. However, even when the children are not present, they can still be affected by parent's arrest. Similarly, staying with the parent prior to the imprisonment also affects their mental state, because living in close association with parent results in the developing affinity and strong child-parent bond, while staying away impedes the same. 87.5 percent accused parent stayed with their family and children prior arrest, while rest did not. Out of six children who stayed away from their parent, 50 percent used to meet the parent at least once in a week, while 33.34 percent never met their parent, and one had contact once in a month.

During the study, 37.50 (table – 4) percent of accused parents responded that the prison authorities recorded no information that the accused was a parent. 81.25 percent accused parents revealed that time was not provided to arrange someone to look after the children during the imprisonment. Since, no time was given to make any alternate arrangement; they were worried for their family and children.

Opinion	Yes		No	
	N	%	N	%
Recording of the fact by prison authorities that the accused is a parent prior to imprisonment	30	62.50	18	37.50
	Once		Twice	
Time provided to arrange someone to look after the children during imprisonment	N	%	N	%
	9	18.75	39	81.25

Table – 4

According to 77.08 percent accused, in their absence, the child was with other parent, while 16.67 percent said that the child was with the grandparents and 4.17 percent revealed that the child was under the custody

of a relative. One respondent said that there was no one to take care for his children. To reaffirm the bond between child and imprisoned parent, it is essential that the child must be brought in contact with the parent. The more frequently, a child meets his/her parent, the more likely he/she develops the trust and faith of being secure; and after the release of parent from the jail, this often proves beneficial for reinstating the family. There are numerous ways through which the contact can be made with the imprisoned parent. Frequency of contact with the child through phone was once in a week in 95.84 percent cases, while it was once in a month for 2.08 percent of parents. 50 percent children visited the imprisoned parents once in a month, while in 50 percent cases the children were not brought in contact with children.

Maintaining the relationship with children during the imprisonment depends on the environment of the prison. If the imprisoned parent considers that it is not healthy for the child, then establishing the healthy relationship is difficult and vice-versa. According to 81.26 percent parents, it was difficult to maintain the relationship in the distressing atmosphere of prison, while according to 18 percent it was not a difficult to maintain a salubrious contact with children in the prison. The behaviour of children often changes, when they came to know about the imprisonment of the parent and this often manifests in changed behaviour including the feeling of insecurity, distress, silence, aggression, etc. According to 43.75 percent imprisoned parents, caregiver complaints that child's behavior has changed. The behaviour of children often changes, when they came to know about the imprisonment of the parent and this often manifests in changed behaviour including the feeling of insecurity, distress, silence, aggression, etc. According to 43.75 percent imprisoned parents, caregiver complaints that child's behavior has changed.

Thus, the acute anxiety about the welfare of children, underlying distress of being cut-off and concern of losing control over decision-making, were the main issues, which were common among the imprisoned parents. The issue of decision-making is related to that of owning sole accountability, to which the parents were self-evident. When asked, "Whose responsibility was child left outside?" Most parents showed distress.

CONCLUSION

In India, unlike in other parts of the world, children are permitted to remain in prison with their imprisoned mothers (and occasionally, fathers) until the end of their six-year sentence. According to the Model Prison Manual of 2003, all children imprisoned should have access to a creche and nursery in a separate walled-in area. The Supreme Court has lavishly prescribed regulations for children whose parents are incarcerated. Regardless, the rule sets have not been routed to their maximum capacity in the vast majority of cases, and in other cases not at all. While in countries such as Australia, children and babies are permitted to live with their primary parental figure in prison only after the Administering Department determines that it is in the best interests of the children to do so and there is no mechanism for the primary guardian to complete her or his sentence in the group (for example, through home confinement), in India, the age is segregated. In India, unlike Australia, no effort is made to ensure that the children in jail are safe, yet the situation is tolerated. India could also learn from Canada's Mother-Child Program (MCP), which provides a full-time

living together program for female criminals with children under the age of four and a low-maintenance program for children aged six and under. An examination of the Juvenile Justice (Care and Protection of Children) Act, 2015 likewise reveals that the act has specific provisions that are identical in terms of safeguarding children's personal interests. If these principles were applied to children of incarcerated parents, they may go a long way toward authorizing their rights and establishing a framework for their safety.

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