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THE RIGHTS OF CHILD IN INDIA WITH SPECIAL REFERENCE TO INCARCERATED PARENTS

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ABSTRACT

Children of incarcerated parents face unique challenges that can significantly impact their well-being and development. In India, while there are legal provisions safeguarding the rights of children, the specific needs of children with incarcerated parents require attention. This paper explores the rights of children in India, with a focus on the rights of children with incarcerated parents. It examines the legal framework, including relevant laws and policies, aimed at protecting the rights of these children.

Additionally, it discusses the socio-economic implications of parental incarceration on children, such as stigma, financial strain, and emotional distress. The paper also highlights the importance of interventions and support systems, both within the criminal justice system and in the broader community, to address the needs of these vulnerable children. By recognizing and addressing the unique challenges faced by children with incarcerated parents, India can strive towards ensuring their rights to a healthy, nurturing environment conducive to their overall development and well-being.

INTRODUCTION

Children with parents who are in prison are sometimes referred to as "forgotten children" and "victims of the justice system. "When a cherished individual is sentenced to incarceration, it becomes challenging for all those involved to manage the intense emotional distress. Children of jailed parents, who are unintentional victims of crime, sometimes suffer the most from the consequences. A correctional facility will never be capable of provide the supportive environment

that every kid is entitled to. Consequently, children whose parents have been jailed have unique difficulties. In India, it is common for children under the age of six to be placed in jail care in order to be with their mothers. Seventy percent of the women in prison in India are mothers with minor children, according to studies by Greenfield and Snell. A woman would prefer that her children remain in jail with her if she is incarcerated and there are no other suitable alternatives for child care. The National Crime Records Bureau's Prison Statistics India Snapshots - 2012 reports that 1,394 prisons in India held 385,135 inmates. In all, 344 mothers and their 382 children were convicted; in other jails around the country, 1,226 mothers and their 1,397 children were waiting for their trials. These youths are facing challenges, and their increasing numbers and specific requirements need assistance. While incarcerated, innocent children endure deplorable living conditions that may cause them to develop low self-esteem and harmful habits down the road. Dads and other family members don't spend enough time with their kids or provide them with enough opportunity for play. Furthermore, as shown by their frequent fighting and use of harsh language, they are exposed to bad influences from other prisoners. They may exhibit problematic conduct in the future as a result of this exposure. There is now no organized method for tracking the quantity of children with jailed parents, and there is also no process in place to check the accuracy of this data. Inmates are not required to provide this information, and thus yet, no effort has been made to directly quantify it. Moreover, imprisoning parents is more prone to intensify rather than ease pre-existing family problems. As the nation's principal system for helping at-risk children, the child welfare system has an obligation to pay special attention to the needs of children whose parents are in prison and to treat them with the dignity and respect they deserve. As a country that has always placed a premium on protecting children's rights, India finds this issue of paramount importance. The last ten years have seen a resurgence of interest in finding solutions for the special problems faced by children whose parents are behind bars. The Preamble to the United Nations Convention on the Rights of the Child (CRC) references the Declaration of the Rights of the Child, which 2 recognizes that children deserve special measures and care, including legal protection, from the moment they are born until the day they grow up. The proclamation acknowledges the children's lack of maturity, both mentally and physically. Additionally, the Preamble stresses the fact that children worldwide are dealing with very challenging circumstances and need particular support. The researchers selected this subject to ascertain the unique challenges involved, scrutinize the legal entitlements accessible to children, and provide remedies for the prevailing concerns in this respect.

Research Questions

- How does the kind and frequency of contact and visitation impact the social, emotional, and behavioral issues experienced by children with jailed parents?
- How does the parent-child relationship influence the connection between the frequency of contact and visitation and the occurrence of social, emotional, and behavioral disorders in children with jailed parents?
- What is the impact of children's attitudes on contact and visitation on the frequency of such interactions, as well as on social, emotional, and behavioral problems?

Hypotheses

- The first study inquiry investigated the correlation between the kind and frequency of contact and visiting, and the occurrence of social, emotional, and behavioral difficulties. The question prompted the formulation of the following hypotheses:
- Increased frequency of getting letters from a jailed parent would strongly correlate with decreased scores on measures of children's and caregivers' views of child internalizing and externalizing difficulties.
- Increased frequency of visits with a jailed parent would strongly correlate with decreased scores on measures of child internalizing and externalizing difficulties, as seen by both the children themselves and their caregivers

Objectives

- To acquire knowledge on the consequences of a mother's apprehension and incarceration on her children.
- The purpose is to promptly address crises, take proactive measures to safeguard individuals, and ensure the provision of essential services both inside and outside the jail facility.
- The objective is to examine how families, neighborhoods, and communities react to the circumstances faced by children of women who are incarcerated
- In order to comprehend the reaction of the relevant authorities within the Justice and Welfare administrations.

RESEARCH METHODOLOGY

This research project for the Doctor of Philosophy in Law has chosen to include the doctrinal or nonempirical aspect of research technique. The doctrinal research is mostly based on primary and secondary material collected from various sources. The examination is based on the fundamental

principles of Family Law.

REVIEW OF LITERATURE

To systematically devise remedies considering legal frameworks in India and other nations, it is important to first distinguish the challenges that occur due to parental confinement and their adverse effects on children. The analysts have performed a comprehensive investigation of the following: (Simmons C.W,2000), Children whose parents are supervised by the criminal justice system are especially at risk. There is a noticeable lack of focus on the plight of children whose parents are in prison, despite the fact that the imprisonment rate is on the rise (Council on Crime and Justice, 2006). While it's common knowledge that kids whose parents are in prison are more prone to act out, the stigma and lack of resources in the child welfare and criminal justice systems may make it hard to help these kids. It is not common practice for correctional facilities to inquire about or collect information about an inmate's family. According to Denise Johnston, it is not always mandatory for law police to inquire about a detainee's children upon their apprehension. It is impossible for administration programs to provide these kids and their families with the essential assistance they need since there is a lack of reliable research and data. (Clarke, n.d.), During the sentencing process, the courts seldom ask about the detainee's children, which means that there is another chance to acknowledge the children and intervene if needed. When it comes to sentence, judges often disregard the culpability of a guilty person in maintaining social harmony. Prison structures and administrative systems are often created without taking into account the effects they have on young prisoners, leading to the creation of remote and isolated offices that are unattractive to young individuals. Reintegrating a parent into a family after incarceration poses challenges for all parties involved. However, both families and prisoners often lack the necessary assistance throughout this process of readjustment, which may be just as challenging as the detention itself. 4 (Beatty, 1997), Despite the fact that proper nutrition and warmth are fundamental to a child's physical and mental development, many youngsters in prison do not get either. Even if these kids did try to participate in rehabilitation programs while incarcerated, they wouldn't have access to the resources they needed. Every parent behind bars has a set of dependent children who rely on them for everything from food and clothing to shelter and schooling as well as for emotional support and physical safety. All children, regardless of their age, are shown together, which prevents any individual youngster from making progress in learning the alphabet. There is no universally applicable method for providing appropriate formal education. The majority of healthcare facilities are also not easily accessible, which disproportionately affects children in need of mental health treatment due to traumatic life events.

Simmons (2000) It has been said that the proximity between a kid's residence and the prison, after the child is six years old and is under the care of a childcare facility in India, significantly influences whether the child would see their parent. Numerous children are unable to afford the expenses associated with visiting a parent who is in prison. When a kid wants to see their jailed father, families may choose not to visit due to the unsanitary and unpleasant conditions of the visiting rooms or the children should not be housed in a correctional facility (Beatty, 1997; Seymour & Hairston, 1998). According to research by Edin, Nelson, and Paranal (2004), a parent's ability to maintain a positive relationship with their child or child's mother while jailed is significantly diminished compared to when the parent was free to contact them. The designers asserted that incarceration may be an effective means of helping parents who had committed crimes mend fences with their children or the child's mother, especially when the guilty party's lifestyle choices had produced a split. Detention provided an opportunity for the jailed parent to reorient their life. Parental imprisonment may impede a child's growth, as shown in the study "Parental incarceration and the Impact of a Parent's or Caregiver's Incarceration on Their Mental Health and Social Development (2013). Families often struggle financially before, during, and after a parent's imprisonment, making it impossible for children to see them. Neelam Sukhramani and Shivangi Gupta (2020) A study was conducted on "Children of Incarcerated Parents" that found that the already existing disadvantage faced by children of prisoners is exacerbated by the lack of consistent implementation of age-appropriate care for children living with their incarcerated mothers, despite guidelines set by the Supreme Court. Children who are left at home while their parents are in jail confront vulnerabilities as a result of their pre-existing socio-economic disadvantages, continued involvement with the criminal justice system, and societal perceptions. This has a substantial influence on the health of prisoners, as well as their educational, social, and emotional well-being. According to the report given by "Women in Prisons" (2018), The Ministry of Women and Child Development said that the number of incarcerated women in India is consistently increasing. Female inmates, a significant number of whom are still in the pretrial phase, have several difficulties in their day-to-day existence. When deciding on a jail for a woman who has a kid, it is important to consider her caregiving obligations. Whenever feasible, the woman should be given the opportunity to choose the prison. It is imperative that children are not subjected to treatment like that of criminals when they are detained in jail. The amenities offered should be customized to suit the needs of the children under the supervision of the administration. In order to ensure that incarcerated children have access to fundamental necessities like as education, child care, recreational activities, and a wholesome lifestyle, non-governmental organizations, educational institutions, and physicians

may play a role. The prison administration will strive to provide an environment for children that closely resembles the conditions experienced by children who are not in jail, to the extent that is practically feasible for their upbringing. In a separate study conducted by Shilpi Sarkar and Sandhya Gupta (2015) titled "Life of children in prison: The Innocent victims of mothers' imprisonment," it was discovered that the children who are imprisoned are essentially innocent victims of their mothers' confinement. These children are primarily lacking the love and affection of their fathers and other family members, and they also have insufficient opportunities for relaxation. Additionally, it was seen that these youngsters were consistently subjected to criminogenic effects from other offenders, including the use of harsh language and regular engagement in physical altercations. The jail atmosphere, in which the innocent youngsters are residing, is susceptible to potentially cultivating poor self-esteem and troublesome conduct in the future. In addition, incarcerated moms indicated worry over the future conduct, schooling, and social interactions of their children. Prayas is a field action project centered on "Social work intervention Criminal Justice" mostly in Maharashtra, and its director, professor Vijay Raghavan of Mumbai's Tata Institute of Social Sciences' Centre for Criminology and Justice, claims that female convicts get limited resources primarily because of their small population size, which makes it economically impractical to establish separate facilities for them. Additionally, he said that the situation is similar for children in prison, since their population is often smaller. Furthermore, he emphasized that a kid, regardless of their age or gender, cannot have a normal existence while surrounded by female criminals while in custody.

Research Problem

The specimens for the current investigation were chosen from the penitentiaries of Lucknow and its environs. The research focused on incarcerated parents whose children were below the age of eighteen.

OVERVIEW OF INCARCERATED PARENTS

Children of imprisoned parents are often considered as forgotten children and ignored victims of justice. When a loved one is sentenced to prison, the emotional turmoil is difficult for everyone to handle. Perhaps those who are unintentional victims of crime children of incarcerated parents, feel the heaviest burden. A jail can never provide a family environment, which every child very much deserves. Therefore, children whose parents have been imprisoned (incarcerated) face

unique difficulties.¹

In India, children younger than 6 years are often brought to remain with mother inside the prison custody.⁵ According to Greenfield and Snell approximately 7 in 10 women under correctional sanction in India have a child who is under the age of 18.⁶ When a woman is imprisoned, in the absence of better solutions for the care of their children, women also prefer that their children remain with them in custody. According to the National Crime Records Bureau's Prison Statistics India Snapshots – 2012, 1,394 existing prisons housed 385,135 inmates in the country. There were a total of 344 women convicts with their 382 children and 1,226 women awaiting trial with their 1,397 children lodged in various prisons in the country. These vulnerable children face unique difficulties, and their growing numbers and special needs demand attention.²

The innocent children are living under the vulnerable circumstances of prison that might lead to future development of low self-esteem and problem behavior. Children are not only deprived of recreational facilities, and affection of father/ family members but also exposed to criminogenic influences of other prison inmates (as reflected in their abusive language and frequent fights) making them vulnerable to future development of problem behavior. There is no systematic way of documenting the number of children with a parent in prison, let alone of confirming the accuracy of these figures. It is not required that prisoners release this type of information, and as of yet, there has been no attempt of direct measurement. Also, imprisoning parents is more likely to compound, than to mitigate, pre-existing family problems³

CONCLUSION

The right of a child in India, particularly in the context of having incarcerated parents, is a multifaceted issue that necessitates a comprehensive understanding of legal frameworks, social dynamics, and the impact on the child's well-being. In a country with a diverse socio-economic landscape like India, children of incarcerated parents often face unique challenges that can significantly affect their growth and development. Therefore, it is imperative to delve into the complexities of this issue and explore potential solutions to ensure that the rights of these children are protected and upheld.

Firstly, it's essential to acknowledge the legal framework surrounding children's rights in India. The Constitution of India guarantees every child the right to life, education, and protection from

¹ Simmons C.W. Children of Incarcerated Parents, California State Library; 2000

² Sarkar S. & Gupta S. Life of Children in Prison: The Innocent Victims of Mother's Imprisonment, IOSR Journal of Nursing and Health Science; 2015

³ Jackie Crawford (2003) —Alternative Sentencing Necessary for Female Inmates With Children in Corrections Today June 2003.

exploitation. Additionally, India is a signatory to the United Nations Convention on the Rights of the Child (UNCRC), which reaffirms the importance of protecting children's rights and ensuring their well-being. However, despite these legal protections, the practical implementation of these rights often faces challenges, particularly in cases involving incarcerated parents.

Children of incarcerated parents are a vulnerable population that requires special attention and support. When a parent is incarcerated, children may experience a range of negative consequences, including emotional trauma, economic hardship, social stigma, and disruptions in education and family life. These challenges can have long-term implications for the child's physical, emotional, and psychological development.

One of the primary concerns for children with incarcerated parents is the emotional impact of separation and stigma. Children may experience feelings of abandonment, shame, and insecurity, which can affect their self-esteem and mental health. They may also face discrimination and social exclusion due to their parents' involvement in the criminal justice system. Therefore, it's crucial to provide these children with emotional support, counseling, and guidance to help them cope with the challenges they face.

Moreover, the financial stability of the family is often compromised when a parent is incarcerated. Many families rely on the incarcerated parent's income for their livelihood, and their absence can push the family into poverty. This economic instability can deprive children of basic necessities such as food, shelter, and healthcare, further exacerbating their vulnerability. Therefore, it's essential to provide financial assistance and social support to these families to mitigate the impact of incarceration on children's well-being.

Education is another critical aspect that is often disrupted when a parent is incarcerated. Children may be forced to drop out of school or miss classes due to financial constraints, caregiving responsibilities, or emotional distress. This can have long-term consequences for their academic performance and future opportunities. Therefore, it's essential to ensure that children of incarcerated parents have access to quality education and support services to help them stay in school and succeed academically.

In addition to these challenges, children of incarcerated parents may also face legal and administrative barriers that prevent them from accessing their rights and entitlements. For example, they may encounter difficulties in obtaining legal documents, accessing government benefits, or maintaining contact with their incarcerated parent. Therefore, there's a need for legal reforms and policy initiatives to address these systemic barriers and ensure that children's rights are protected.

In conclusion, the right of a child in India, particularly with incarcerated parents, requires a

comprehensive approach that addresses their emotional, economic, social, and educational needs. By recognizing the unique challenges faced by these children and implementing targeted interventions and support services, we can ensure that they have the opportunity to thrive and reach their full potential. Protecting the rights of children of incarcerated parents is not only a legal and moral imperative but also essential for building a more inclusive and equitable society.

