

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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SERVING AN UNSEEN SENTENCE: THE TRUE TOLL OF MATERNAL INCARCERATION ON CHILD WELFARE

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1. INTRODUCTION

Maternal incarceration is an important but comparatively less discussed consequence of the criminal justice system. It refers to the imprisonment, detention or custody of a woman who has dependent children. In principle, imprisonment is a form of punishment or preventive detention directed towards the individual involved in criminal proceedings.¹ However, in practice, the consequences of incarceration frequently extend beyond the prisoner and affect the entire family. Among all family members, children are particularly vulnerable because they may depend upon their mother for care, emotional support, education, financial assistance, and protection. The imprisonment of a mother can therefore create a situation where the child suffers without having committed any offence. The child may suddenly lose the presence of the primary caregiver, experience a change in residence, face financial difficulties, or suffer disruption in education. In certain circumstances, the child may accompany the mother to prison. Although the child is not an accused or convicted person, he or she may spend important developmental years within a custodial environment.

This phenomenon can be described as an “**unseen sentence.**” The term represents the indirect consequences experienced by children because of the incarceration of their mothers. Unlike the mother, the child does not receive a formal sentence from a court. There is no conviction against the child, and no judicial order directing the child to suffer imprisonment.² Nevertheless, the child may experience separation, stigma, economic hardship, emotional trauma, and disruption of normal childhood experiences. The concept of the unseen sentence raises an important legal principle: **criminal responsibility is personal.** A person should not be punished for the conduct of another person. Therefore, when imprisonment of a mother causes substantial harm to her child, the State has a responsibility to minimize that harm while maintaining legitimate

¹ Ashworth, A., Zedner, L., & Tomlin, P. (Eds.). (2013). *Prevention and the Limits of the Criminal Law*. Oxford University Press.

² Willow, C. (2015). *Children behind bars: why the abuse of child imprisonment must end*. Policy Press.

criminal justice objectives.³ The issue becomes particularly complicated when young children remain with incarcerated mothers. In India, children below a prescribed age may remain with their mothers under specified conditions. This arrangement attempts to protect the child's relationship with the mother and recognizes that forced separation of very young children may itself be harmful. However, it also raises concerns regarding the child's exposure to prison conditions.

The Supreme Court of India addressed this issue extensively in *R.D. Upadhyay v. State of A.P.*⁴ The Court recognized that children living with incarcerated mothers are not prisoners themselves and should receive independent protection. The Court issued directions concerning food, clothing, healthcare, education, recreation, crèches, nurseries and arrangements after the child reaches six years.

The importance of the subject lies in the fact that maternal incarceration is not merely a prison administration issue. It involves **constitutional rights, child welfare, women's rights, family relationships, socio-economic justice, and human dignity**. A criminal justice system that focuses only on the offender may overlook innocent children who experience the consequences of imprisonment.⁵ The Indian Constitution provides a strong foundation for protecting such children. Article 14 guarantees equality before law, Article 15(3) permits special provisions for women and children, Article 21 protects life and dignity, and Article 21A recognizes the right to education. Articles 39(e) and 39(f) further emphasize the protection and healthy development of children.

The present research therefore examines maternal incarceration from a child-centered perspective. It studies the historical development of women's imprisonment, the constitutional and statutory framework, the psychological and socio-economic consequences for children, judicial intervention and the existing gaps between legal safeguards and practical implementation. The central argument of this paper is that **the punishment imposed upon a mother should not become an additional punishment for her child**. The State must ensure that children affected by maternal incarceration retain their rights to dignity, education, healthcare, family relationships, and healthy development.⁶

³ Millar, H., & Dandurand, Y. (2018, June). The best interests of the child and the sentencing of offenders with parental responsibilities. In *Criminal Law Forum* (Vol. 29, No. 2, pp. 227-277). Dordrecht: Springer Netherlands.

⁴ *R.D. Upadhyay v. State of A.P.*, (2007) 15 S.C.C. 337 (Supreme Court of India 2006).

⁵ Robertson, O. (2007). *The impact of parental imprisonment on children*. Geneva: Quaker United Nations Office.

⁶ Singh, B. (2024). Social cognition of incarcerated women and children: Addressing exposure to infectious diseases and legal outcomes. *Principles and Clinical Interventions in Social Cognition*, 236-251.

2. HISTORICAL BACKGROUND AND EVOLUTION OF WOMEN'S IMPRISONMENT

The history of imprisonment in India demonstrates a gradual movement from a purely punitive model towards a system that recognizes rehabilitation, human dignity and social reintegration. During the colonial period, prisons were primarily established to confine individuals and maintain discipline. The **Prisons Act, 1894**⁷ provided an important statutory framework for prison administration. The emphasis was largely upon custody, security, and institutional discipline rather than rehabilitation or the individual needs of prisoners.

Historically, prison systems were predominantly designed around male prisoners.⁸ As a result, the special requirements of women received comparatively limited attention. Women prisoners have specific physical, reproductive and social needs that cannot always be accommodated through a prison system designed for men.⁹ These include pregnancy, childbirth, menstruation, maternal healthcare, childcare, and maintaining family relationships.

The issue becomes more complicated where an incarcerated woman has dependent children. In many families, mothers are primary caregivers. Their imprisonment can therefore result in an immediate disruption of the child's everyday life. Unlike the imprisonment of a person without dependent children, maternal imprisonment may create direct consequences for another vulnerable person.

Following independence, the constitutional framework fundamentally changed the approach towards prisoners. The Constitution recognized fundamental rights applicable to all persons, including those deprived of liberty. Judicial decisions gradually established that prisoners do not lose all their constitutional rights merely because they are incarcerated.

Indian courts began to intervene in matters relating to prison conditions, custodial violence, legal aid, health and dignity. This judicial development gradually transformed the prison from an institution of mere punishment into an institution that also carries responsibilities towards rehabilitation and human welfare. The position of women prisoners received increasing attention as awareness developed regarding gender-specific prison requirements.¹⁰ Special provisions concerning pregnancy, childbirth, and children accompanying mothers began to emerge through judicial directions, prison manuals and administrative rules. One of the most

⁷ Prisons Act, 1894, Act No. 9 of 1894 (India).

⁸ Rafter, N. H. (1985). Gender, prisons, and prison history. *Social Science History*, 9(3), 233-247.

⁹ World Health Organization. (2009). *Women's health in prison: Correcting gender inequity in prison health* (No. WHO/EURO: 2009-4247-44006-62055). World Health Organization. Regional Office for Europe.

¹⁰ Wright, E. M., Van Voorhis, P., Salisbury, E. J., & Bauman, A. (2012). Gender-responsive lessons learned and policy implications for women in prison: A review. *Criminal Justice and Behavior*, 39(12), 1612-1632.

important developments was the recognition of the rights of children living with incarcerated mothers. Before this development, children accompanying women prisoners could be viewed administratively as persons attached to prisoners. However, such an approach failed to recognize their independent rights.

The Supreme Court's decision in *R.D. Upadhyay v. State of A.P.* represented a major transformation. The Court recognized that children living in prison with their mothers are not responsible for the mother's conduct. It therefore directed that such children should receive food, healthcare, clothing, education and recreation. The Court also considered the issue of crèches, nurseries and arrangements for children after reaching six years.

This judicial approach reflected an important change:

From punishment of offenders → to protection of prisoners' rights → to recognition of family rights → to protection of children as independent rights-holders.

The development of the **Model Prison Manual, 2016** further reflects this changing philosophy. The Manual recognizes the special requirements of women prisoners and children and provides guidance relating to healthcare, childcare, education, nutrition and rehabilitation.

The modern prison system therefore increasingly recognizes that imprisonment cannot be viewed in isolation from family and social circumstances. Rehabilitation of the mother is connected with the child's welfare. If a mother receives education, vocational training, healthcare, and rehabilitation support, her ability to reintegrate into society and resume family responsibilities may improve.¹¹

The historical development demonstrates that the treatment of women prisoners cannot be separated from the question of children.¹² A prison system that ignores dependent children fails to recognize the actual social consequences of incarceration.

Thus, the evolution of women's imprisonment in India represents a movement from a **custody-centered model towards a rights-based and rehabilitation-oriented model**, in which the welfare of children has become an important consideration.¹³

¹¹ Young, D. S., & Smith, C. J. (2000). When moms are incarcerated: The needs of children, mothers, and caregivers. *Families in Society*, 81(2), 130-141.

¹² Morash, M., & Schram, P. J. (2002). *The prison experience: Special issues of women in prison*. Waveland Press.

¹³ Fabian, S. L. (1979). Toward the best interests of women prisoners: Is the system working. *New Eng. J. on Prison Law*, 6, 1.

3. LEGAL AND CONSTITUTIONAL FRAMEWORK FOR PROTECTION OF CHILDREN OF INCARCERATED MOTHERS

Article 14 – Right to Equality

Article 14 guarantees equality before law and equal protection of laws. In the context of maternal incarceration, Article 14 requires that children should not suffer arbitrary or discriminatory treatment merely because their mother is imprisoned.

The criminal responsibility of a mother cannot automatically become the legal responsibility of her child. The child possesses a separate legal identity and is entitled to protection independently of the mother's criminal status.¹⁴

At the same time, equality permits the State to adopt special measures for vulnerable groups. Children of incarcerated mothers may require additional assistance because of their circumstances. Providing them with specialized healthcare, education, counselling, and childcare therefore promotes substantive equality.¹⁵

Article 15(3) – Special Provisions for Women and Children

Article 15(3) empowers the State to make special provisions for women and children. This is particularly relevant to maternal incarceration because women prisoners and their children have specific needs.

Special provisions may include:

- maternity care;
- childcare;
- crèche facilities;
- nutritional support;
- healthcare;
- educational facilities;
- psychological counselling; and
- rehabilitation programmes.

Such measures are constitutionally justified because identical treatment may not adequately protect vulnerable children.

¹⁴ Cret, D. C. (2024). The Child's Right to Establish and Preserve His or Her Identity. Legislative and Case-law Considerations. *Journal of Legal Studies "Vasile Goldiș"*, 33(47), 158-171.

¹⁵ Waldegrave, C. (2009). Cultural, gender, and socioeconomic contexts in therapeutic and social policy work. *Family process*, 48(1), 85-101.

Article 21 – Right to Life and Dignity

Article 21 is perhaps the most important constitutional protection in this context. The right to life has been interpreted by the Supreme Court to include the right to live with dignity.¹⁶ For children living with incarcerated mothers, dignity cannot be reduced to physical survival. The child must have access to adequate nutrition, healthcare, education, recreation, emotional support and an environment suitable for development.

The child should also not be subjected to humiliating treatment because of the mother's criminal status. The principle of dignity therefore requires prison authorities to recognise the child as a person with independent rights rather than merely an accompanying member of the prisoner's family.

Article 21A – Right to Education

Article 21A provides children within the constitutionally specified age group with a fundamental right to education.¹⁷ Maternal incarceration cannot extinguish this right. Children living with incarcerated mothers must continue to receive appropriate educational opportunities. Where children live outside prison, their caregivers and authorities must ensure that imprisonment does not interrupt schooling. Where children remain inside prison, appropriate educational and developmental programmes must be provided.¹⁸ Education is particularly important because interruption during childhood can have long-term consequences for employment, social mobility and economic independence.

Articles 39(e) and 39(f)

Articles 39(e) and 39(f) provide important constitutional guidance concerning children. Article 39(e) requires the State to protect the health and strength of children from abuse and unsuitable conditions.

Article 39(f) emphasizes opportunities for children to develop in a healthy manner and in conditions of freedom and dignity.

These provisions demonstrate that child development is a constitutional objective. Therefore, prison administration must take children's developmental interests into account.

¹⁶ Das, P. (2020). Critical Analysis on Interpretation of Article 21 of the Indian Constitution. *Issue 5 Int'l JL Mgmt. & Human.*, 3, 424.

¹⁷ Kapoor, H. (2021). Right of Children for Free and Compulsory Education. *Issue 4 Int'l JL Mgmt. & Human.*, 4, 4026.

¹⁸ Ayers, J. D. (1981). Education in prisons: A developmental and cultural perspective. *Canadian Journal of Education/Revue canadienne de l'education*, 20-38.

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

The Juvenile Justice (Care and Protection of Children) Act, 2015 provides a comprehensive framework for the care, protection, development and rehabilitation of children.¹⁹ Its relevance becomes particularly clear where the imprisonment of a mother leaves a child without an adequate caregiver. The child may require intervention through child protection authorities.

The Act is based upon principles such as the best interests of the child, family responsibility and institutionalization as a measure of last resort where appropriate.

The Act therefore complements prison law. While prison regulations govern the mother and the custodial environment, child protection legislation focuses upon the independent welfare of the child.

Model Prison Manual, 2016

The Model Prison Manual, 2016 represents an important attempt to establish common principles for prison administration in India. It contains provisions concerning women prisoners, children, healthcare, education and rehabilitation.

The Manual recognizes that children accompanying women prisoners require special care and protection.²⁰ It promotes facilities concerning nutrition, healthcare, education and recreation.

The Manual is important because it shifts the prison system towards a welfare-oriented approach. However, prisons are primarily a State subject, and implementation therefore depends substantially upon individual States and Union Territories. This can create differences in prison infrastructure, staffing and services.

Delhi Prison Rules, 2018

The Delhi Prison Rules, 2018 contain specific provisions relating to women prisoners and children accompanying them. The Rules recognise special requirements relating to pregnancy, childbirth, childcare and education. Young children may remain with their mothers under specified circumstances, and arrangements such as crèches and nursery facilities are provided for.²¹ These provisions reflect the principle that children accompanying mothers must not be treated as prisoners. However, the effectiveness of these provisions depends upon

¹⁹ Nanjunda, D. (2023, June). *Childcare institutions under the juvenile justice (Care and protection) act, 2015: Status and measures to improve.*

²⁰ Bartlett, A., & Hollins, S. (2018). Challenges and mental health needs of women in prison. *The British Journal of Psychiatry*, 212(3), 134-136.

²¹ Bihan, B. L., & Martin, C. (2004). Atypical working hours: Consequences for childcare arrangements. *Social Policy & Administration*, 38(6), 565-590.

implementation. A rule guaranteeing a crèche is meaningful only if the facility is adequately staffed, safe and developmentally appropriate.

4. IMPACT OF MATERNAL INCARCERATION ON CHILD WELFARE

4.1 Psychological and Emotional Impact

The psychological consequences of maternal incarceration can be significant. A mother is often a child's primary source of emotional security, particularly during early childhood.²² Sudden separation may create anxiety, fear, loneliness and insecurity.

Children may struggle to understand why their mother is no longer at home. Older children may experience embarrassment or anger, particularly when they become aware of the criminal case. Long-term separation can also affect the relationship between mother and child. Even after release, both may require time and support to rebuild their relationship.²³

Children living inside prison face another psychological challenge. They remain physically close to their mothers but grow up in an environment dominated by institutional rules, security procedures and restrictions. Therefore, psychological counselling should be made an important part of prison welfare programmes.

4.2 Educational Disruption

Maternal incarceration may interfere with a child's education. If the mother was the primary caregiver, the child may have to move to another household or location.

Changing schools can result in:

- interruption of studies;
- loss of friendships;
- adjustment difficulties;
- increased expenses; and
- lower academic performance.

Financial hardship can further reduce access to education. Children living inside prison also require special educational support. Although crèches and nursery facilities can address early childhood needs, children must have continued opportunities for structured learning and

²² Main, M., Kaplan, N., & Cassidy, J. (1985). Security in infancy, childhood, and adulthood: A move to the level of representation. *Monographs of the society for research in child development*, 66-104.

²³ Brown, M., & Bloom, B. (2009). Reentry and renegotiating motherhood: Maternal identity and success on parole. *Crime & Delinquency*, 55(2), 313-336.

interaction.²⁴ Educational continuity is therefore essential to ensure that the consequences of the mother's incarceration do not permanently affect the child's future.

4.3 Economic and Financial Consequences

The economic impact of maternal incarceration can be substantial. Women may contribute directly to household income or may provide unpaid domestic labour and childcare. When they are imprisoned, families may have to arrange alternative childcare and meet additional expenses. The family may also have to spend money on transportation for prison visits, legal proceedings and other related expenses.²⁵ Where families are already economically vulnerable, these additional costs can lead to reduced spending on education, healthcare and nutrition. Maternal incarceration may therefore contribute to an intergenerational cycle of poverty:

Incarceration → loss of income/care → financial hardship → educational disadvantage → reduced future opportunities.

4.4 Health and Nutritional Concerns

Children require appropriate nutrition, vaccination, medical examinations and healthy living conditions. These requirements become particularly important when children live inside prison. The Supreme Court in *R.D. Upadhyay* recognised the need for adequate food, medical care, hygiene and other facilities for children accompanying incarcerated mothers.

Healthcare should include preventive and developmental care rather than only treatment of illness.²⁶ Regular monitoring of nutrition, growth and development is essential. Pregnant women prisoners also require prenatal and postnatal care because the health of the mother and child are closely connected.

4.5 Social Stigma and Discrimination

One of the most difficult consequences of maternal incarceration is social stigma. Children may be judged because their mother has been arrested or convicted. They may face bullying, exclusion or negative assumptions. This may affect their confidence and willingness to participate in school and community activities.²⁷ The principle of individual responsibility

²⁴ Trancik, A. M., & Evans, G. W. (1995). Spaces fit for children: Competency in the design of daycare center environments. *Children's Environments*, 311-319.

²⁵ Smith, R., Grimshaw, R., Romeo, R., & Knapp, M. (2007). *Poverty and disadvantage among prisoners' families* (Vol. 10). York: Joseph Rowntree Foundation.

²⁶ Kenner, C., & McGrath, J. M. (Eds.). (2021). *Developmental care of newborns & infants*. Lippincott Williams & Wilkins.

²⁷ Thornberg, R., Halldin, K., Bolmsjö, N., & Petersson, A. (2013). Victimising of school bullying: A grounded

requires that the child should not be blamed for the parent's conduct. Authorities should therefore protect the confidentiality of children's circumstances and ensure that schools and social institutions adopt sensitive approaches.

4.6 Effect of Living Inside Prison

Children living inside prison occupy a unique legal position. They are physically present within the prison but are not prisoners. Prison environments are designed around security, discipline and confinement. Childhood development, on the other hand, requires freedom, exploration, play, social interaction and emotional security.²⁸ The challenge is therefore to ensure that the prison environment does not interfere with the child's normal development.

Crèches, nursery facilities, play areas, education and healthcare can reduce the negative effects, but they cannot completely transform a prison into an ordinary childhood environment.²⁹ Therefore, children should remain in prison only where such an arrangement is consistent with their best interests and where adequate safeguards are available.

4.7 Separation from Mother After the Age of Six

The age of six presents a particularly sensitive stage because children may no longer ordinarily continue living with their incarcerated mothers. Although the purpose is to prevent prolonged exposure to prison, separation itself may create emotional trauma.

A child who has spent the first years of life with the mother may suddenly be transferred to relatives or an institution. Authorities should therefore begin planning well before the child reaches six. They should consider the child's emotional relationship with the mother, availability of relatives, safety, education, healthcare and the mother's expected period of incarceration.³⁰ The objective should be **continuity of care rather than mere physical separation.**

5. JUDICIAL APPROACH AND CRITICAL ANALYSIS

5.1 R.D. Upadhyay v. State of A.P.

The landmark judgment of *R.D. Upadhyay v. State of A.P.* represents the most significant

theory. *Research Papers in Education*, 28(3), 309-329.

²⁸ Powell, B., Cooper, G., Hoffman, K., & Marvin, B. (2013). *The circle of security intervention: Enhancing attachment in early parent-child relationships*. Guilford publications.

²⁹ Nesti, M. M., & Goldbaum, M. (2007). Infectious diseases and daycare and preschool education. *Jornal de pediatria*, 83, 299-312.

³⁰ Arditti, J. A. (2012). *Parental incarceration and the family: Psychological and social effects of imprisonment on children, parents, and caregivers*. NYU press.

judicial intervention concerning children accompanying women prisoners. The Supreme Court recognised that children may be compelled to remain in prison with their mothers through no fault of their own.³¹ The Court acknowledged that prison conditions are not naturally suitable for childhood development.

It therefore issued detailed directions to ensure that children receive:

- adequate food;
- clothing;
- healthcare;
- education;
- recreation;
- crèche facilities;
- nursery facilities; and
- appropriate arrangements after reaching six years.

Most importantly, the Court recognised that such children are **not undertrial prisoners or convicts**.³² This distinction is fundamental. It establishes that the child has an independent legal identity and that the mother's imprisonment cannot determine the child's legal status.

5.2 Sheela Barse v. Secretary, Children's Aid Society

The Supreme Court's decision in *Sheela Barse v. Secretary, Children's Aid Society* is another important development in child-rights and custodial jurisprudence. The Court expressed concern regarding children exposed to institutional and custodial environments and emphasised the need for humane treatment and protection.³³

The decision reflects the broader principle that children require special protection because of their age and vulnerability.³⁴ Together with *R.D. Upadhyay*, the case demonstrates the judiciary's movement towards a rights-based approach to children in contact with the criminal justice system.

5.3 Judicial Recognition of Children as Independent Rights-Holders

The most important judicial development is the recognition that children affected by maternal

³¹ Munro, V. E. (2002). The emerging rights of imprisoned mothers and their children. *Child & Fam. LQ*, 14, 303.

³² Khan, S. (2022). The Analysis of the Legal Services for Women Prisoners and Their Children in Indian Prisons. *Nyaayshastra L. Rev.*, 3, 1.

³³ Woodhouse, B. B. (1999). Child custody in the age of children's rights: The search for a just and workable standard. *Family Law Quarterly*, 33(3), 815-832.

³⁴ Tobin, J. (2015). Understanding children's rights: A vision beyond vulnerability. *Nordic Journal of International Law*, 84(2), 155-182.

incarceration possess rights independently of their mothers.

The child is entitled to:

- dignity;
- education;
- healthcare;
- nutrition;
- recreation;
- family relationships; and
- protection from discrimination.

The child cannot be treated as an offender simply because the parent has been convicted. This principle reinforces the fundamental concept that criminal responsibility is personal.

5.4 Supreme Court's Directions Regarding Children

The directions in *R.D. Upadhyay* provides a comprehensive framework for child welfare in prisons. The Court addressed food, clothing, healthcare, education and recreation. It also required crèche and nursery facilities and appropriate arrangements for children after six years.³⁵ The Court further recognised the importance of maintaining mother-child relationships and ensuring visitation. These directions demonstrate that child welfare requires more than physical custody. Children require an environment supporting their holistic development.

5.5 Role of Legal Services Authorities and Monitoring

The Supreme Court recognised the importance of monitoring compliance with its directions. Legal Services Authorities were given an important role in inspecting prisons and identifying deficiencies. Independent monitoring is essential because prison authorities are responsible for implementing many of the rights involved. Legal Services Authorities can also assist women prisoners in accessing legal aid and understanding their rights.³⁶ Monitoring should not merely identify violations. It should also result in corrective action.

5.6 Critical Analysis of Implementation

Although India has developed an extensive legal framework, implementation remains a major

³⁵ Moore, G. T. (1987). The physical environment and cognitive development in child-care centers. In *Spaces for children: The built environment and child development* (pp. 41-72). Boston, MA: Springer US.

³⁶ Stapleton, A. (2010). Empowering the Poor to Access Criminal Justice: A Grassroots Perspective. *Legal Empowerment: Practitioners' Perspectives*, 39.

concern. The quality of facilities can differ according to prison infrastructure, resources, staffing and administrative capacity. Another difficulty is the continued focus on prison security. Security is obviously necessary, but it should not become the sole consideration when children are involved. A child requires play, education, emotional support and social interaction. These requirements are fundamentally different from those of an adult prisoner. The Model Prison Manual provides important guidance, but implementation is primarily dependent upon States and Union Territories.

Therefore, the central problem can be described as a **gap between law and practice**. India does not necessarily suffer from a complete absence of legal safeguards.³⁷ Instead, the challenge is ensuring that the safeguards are consistently implemented and independently monitored.

6. FINDINGS, RECOMMENDATIONS AND CONCLUSION

6.1 Major Findings of the Study

The study establishes that maternal incarceration has consequences extending beyond the mother. Children can experience emotional, educational, economic, social and developmental difficulties.³⁸ The research also establishes that Indian constitutional law provides significant protection to children affected by maternal incarceration. Articles 14, 15(3), 21 and 21A provide a constitutional foundation, while Articles 39(e) and 39(f) reinforce the State's responsibility towards children's development. The Juvenile Justice Act, Model Prison Manual and prison rules provide additional protection.³⁹

The judiciary, particularly through *R.D. Upadhyay*, has recognised children as independent rights-holders. However, the effectiveness of these safeguards depends upon implementation, monitoring and availability of resources.

6.2 Need for Child-Sensitive Prison Administration

The prison system should adopt a **child-sensitive approach** whenever a woman prisoner has dependent children. The primary question should not merely be how the prisoner is to be managed, but also:

³⁷ Ginsburg, K. R., Committee on Communications, & Committee on Psychosocial Aspects of Child and Family Health. (2007). The importance of play in promoting healthy child development and maintaining strong parent-child bonds. *Pediatrics*, 119(1), 182-191.

³⁸ Bilton, K., & Cooper, P. (2012). social, emotional and behavioural difficulties. *The Routledge international companion to emotional and behavioural difficulties*, 32.

³⁹ Howell, J. C. (2009). *Preventing and reducing juvenile delinquency: A comprehensive framework*. SAGE Publications, Inc..

What effect will the mother's incarceration have upon the child?

This approach requires cooperation between prison authorities, courts, child welfare authorities, Legal Services Authorities and social workers.

6.3 Child Impact Assessment at the Time of Arrest

Whenever a woman with dependent children is arrested, authorities should identify the potential impact on those children.

The assessment should include:

- number and age of children;
- primary caregiver;
- educational needs;
- health requirements;
- financial dependency;
- alternative family arrangements; and
- possibility of continued mother-child contact.

Early assessment can prevent children from falling into vulnerable situations.

6.4 Individual Care Plans

Children affected by maternal incarceration should receive individual care plans where necessary.

The plan should identify:

- caregiver;
- education;
- healthcare;
- psychological support;
- visitation arrangements;
- family relationships; and
- long-term placement.

Such planning is particularly important for children approaching six years.

6.5 Strengthening Crèches, Education and Healthcare

Where children remain with their mothers, prison crèches and nursery facilities should be adequately staffed and equipped. Children should have access to nutritious food, healthcare,

education and safe recreational spaces.⁴⁰ Educational facilities should focus on holistic development rather than simply basic literacy.

6.6 Psychological Counselling

Psychological counselling should be available to children and mothers. Children may require professional assistance to deal with separation, stigma and uncertainty.⁴¹ Counselling can also help mothers maintain healthy relationships with their children and prepare for eventual reunification.

6.7 Maintaining Mother-Child Contact

Meaningful mother-child contact should be facilitated wherever it is in the child's best interests. Physical visits, telephone communication, video calls and letters can help maintain emotional bonds. Visitation systems should be child-friendly and should avoid unnecessarily intimidating prison procedures.⁴²

6.8 Alternatives to Incarceration Where Legally Appropriate

Courts should consider legally available alternatives to incarceration where appropriate. This may be particularly relevant where the woman is the primary caregiver of young children and the offence and circumstances permit a non-custodial approach. Possible mechanisms may include bail, probation, parole and other legally permissible alternatives.⁴³ The objective is not to weaken criminal justice but to ensure proportionality and minimise unnecessary harm to innocent children.

6.9 Post-Six-Year Rehabilitation and Placement

Children approaching the age of six require careful planning. Authorities should consider family-based care wherever safe and appropriate. If institutional care becomes necessary, the

⁴⁰ Chatterjee, S., & Nallari, A. (2025). Rights-based policies, processes, and solutions for community public spaces, social integration, and recreational facilities for urban children in poverty. In *Handbook on Child Poverty and Inequality* (pp. 386-408). Edward Elgar Publishing.

⁴¹ Dam, K., & Hall, E. O. (2016). Navigating in an unpredictable daily life: a metasynthesis on children's experiences living with a parent with severe mental illness. *Scandinavian journal of caring sciences*, 30(3), 442-457.

⁴² Boudin, C. (2011). Children of incarcerated parents: The child's constitutional right to the family relationship. *J. CRIm. l. & CRImInoloGy*, 101, 77.

⁴³ Hannah-Moffat, K., & Maurutto, P. (2012). Shifting and targeted forms of penal governance: Bail, punishment and specialized courts. *Theoretical Criminology*, 16(2), 201-219.

child should continue to receive education, healthcare and emotional support.⁴⁴ The relationship with the mother should be preserved wherever consistent with the child's best interests. The child should not be treated as simply being “removed” from prison. The transition should be gradual, planned and supported.

6.10 Final Conclusion

Maternal incarceration presents a unique challenge because the consequences of imprisonment can extend to people who have never been accused of an offence. Children are particularly vulnerable because they depend upon parents for emotional, economic and physical support. The concept of the “unseen sentence” captures this reality. A child may never appear in a criminal judgment, yet may experience the loss of a mother, financial insecurity, educational disruption, psychological distress and social stigma.⁴⁵ Indian constitutional law provides significant protection. Articles 14, 15(3), 21 and 21A establish important rights relating to equality, special protection, dignity and education. Articles 39(e) and 39(f) further emphasise the protection and healthy development of children. The Juvenile Justice Act, 2015, Model Prison Manual, 2016 and Delhi Prison Rules, 2018 provide additional institutional mechanisms. Most importantly, *R.D. Upadhyay v. State of A.P.* established that children accompanying incarcerated mothers are not prisoners and must receive independent protection. Nevertheless, the existence of legal safeguards does not automatically guarantee welfare. Implementation, infrastructure, staffing and monitoring remain important challenges. A prison may comply with formal requirements while still failing to provide children with the environment necessary for healthy development. The solution lies in adopting a child-sensitive and family-sensitive approach to criminal justice.⁴⁶ Authorities should assess the impact of maternal incarceration at the earliest stage, develop individual care plans, strengthen childcare and educational facilities, provide psychological support, maintain mother-child contact and consider legally permissible alternatives to imprisonment.

The fundamental principle should be clear, a child should never be punished for the offence of a parent. The criminal justice system has a legitimate responsibility to protect society and impose lawful consequences upon offenders.⁴⁷ However, that responsibility must be balanced

⁴⁴ Deb, S., Sunny, A. M., & Majumdar, B. (2019). Children under institutional care: Ensuring quality care and safety. In *Disadvantaged Children in India: Empirical Evidence, Policies and Actions* (pp. 175-215). Singapore: Springer Singapore.

⁴⁵ Morgan, J., & Zedner, L. (1992). *Child victims: Crime, impact, and criminal justice*. Oxford University Press.

⁴⁶ Ananth, A. L. (2014). The gracious spaces of children's law: Innocence and culpability in the construction of a children's court.

⁴⁷ Robinson, P. H. (1975). A theory of justification: societal harm as a prerequisite for criminal liability. *UCLA L.*

against the rights and welfare of innocent children. A humane prison system should therefore be evaluated not merely by how effectively it confines prisoners, but also by how effectively it protects those who are unintentionally affected by incarceration. The mother's sentence may be recorded in a judgment, but the child's suffering may remain invisible.⁴⁸ Recognising and addressing that suffering is essential to achieving a criminal justice system based not only on punishment, but also on constitutional dignity, rehabilitation, justice and child welfare. That is why maternal incarceration should not be understood merely as a sentence imposed upon a woman. Its true impact must also be measured by the unseen sentence experienced by her child.

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⁴⁸ Larsen, A. C. (2015). Seeing children's suffering: feminist legal methods, sentencing decisions and incarcerating mothers who offend. *Outskirts*, 32.

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